TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 269.

CONSTANCE C. REDFIELD AND FRANK B. REDFIELD, EXECUTRIX AND EXECUTOR OF HEMAN J. REDFIELD, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFFS IN ERROR,

vs.

GEORGE F. W. BARTELS, PETER A. H. RENAULD AND EMANUEL E. FRANÇOIS.

No. 270.

GEORGE F. W. BARTELS, PETER A. H. RENAULD AND EMANUEL E. FRANÇOIS, PLAINTIFFS IN ERROR,

vs.

CONSTANCE C. REDFIELD AND FRANK B. REDFIELD, EXECUTRIX AND EXECUTOR OF HEMAN J. REDFIELD, DECEASED, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 21, 1887.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court before you, between George F. W. Bartels, E. E. François and P. A. H. Renauld, plaintiffs, and Constance C. Redfield & ano., executors, &c., defendants, a manifest error hath happened to the great damage of the said Constance C. Redfield & ano., executors, &c., as by their complaint appears: We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and eighty-seven, in the said Supreme Court, to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness, the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 6th day of October, in the year of our Lord one thousand eight hundred and eighty-seven.

TIMOTHY GRIFFITH,
Clerk.

The forgeoing writ is hereby allowed.

E. H. LACOMBE,
Circuit Judge.

2 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages numbered from five to three hundred and sixty-nine inclusive contain a true and complete transcript of the records and proceedings had in said court in the case of Constance C. Redfield and Frank B. Redfield, executors, &c., of Heman J. Redfield, deceased, plaintiffs in error, against George F. W. Bartels, Peter A. H. Renauld, and Emanuel E. François, defendants in error as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York in the second circuit this fifteenth day of October, in the year of our Lord, one thousand, eight hundred and eighty-seven, and of the independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed:) O. S. 1596, U. S. Supreme Court. Constance C. Redfield & ano., executors, etc., plaintiffs in error, against George F. W. Bartels et al., defendants in error. Writ of error. Due service of a copy of the within writ of error is admitted this 6 day of Oct., 1887. Marsh, Wilson & Wallis, attorneys for defendants in error, per A. W. Griswald, counsel. U. S. Circuit Court. Filed, Oct. 6, 1887. Timothy Griffith, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between George F. W. Bartels, Peter A. H. Renauld, and Emanuel E. François, plaintiffs in error, and Constance C. Redfield and Frank B. Redfield, executors, &c., of Heman J. Redfield, deceased, defendants in error, a manifest error hath happened, to the great damage of the said George F. W. Bartels, Peter A. H. Renauld, and Emanuel E. François, plaintiffs in error, as is said, and as appears by their complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, and then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the third Monday of October term, 1887, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 10th day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America,
for the Southern District of New York, in the Second Circuit.

The within writ is allowed.

E. HENRY LACOMBE,
Circuit Judge.

4 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Timothy Griffith, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify,

that the following pages, numbered from five to three hundred and sixty-nine, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of George F. W. Bartels, Peter A. H. Renauld, and Emanuel E. François, plaintiffs in error, against Constance C. Redfield and Frank B. Redfield, executors, &c., of Heman J. Redfield, deceased, defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this fifteenth day of October, in the year of our Lord, one thousand eight hundred and eighty-seven, and of the Independence of the United States the one hundred and twelfth.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Indorsed): O. S. 1596. U. S. Supreme Court, George F. W. Bartels et al., pffs. in error, o. s. 1596, vs. Constance C. Redfield, et al., exrs., &c., dfts. in error. Writ of error. Marsh, Wilson, and Wallis, pr. A. W. Griswold, attys. for plffs. in error, 155 Broadway, New York. Due service of a copy of within writ of error is hereby submitted. Dated 1887. A copy of the within paper has been this day received at this office. Oct. 10, 1887. Stephen A. Walker, U. S. Attorney. U. S. Circuit Court. Filed Oct. 10, 1887. Timothy Griffith, Clerk.

5 N. Y. supreme court.

GEORGE F. W. BARTELS, E. E. FRANCOIS, AND P. A. H. Renauld,
against
HEMAN J. REDFIELD, LATE COLLECTOR OF the port of New York.

Summons for a money demand on contract.

(Com. not Ser.) (Internal-revenue stamp, 50 cts.)

To the defendant:

You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the city and county of New York, at the City Hall, in said city, and to serve a copy of your answer to the said complaint on the subscribers at their office, No. 39 Nassau street, in the said city, within twenty days after the service of this summons on you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of fifteen hundred dollars, by order of court of January 8, 1881, increased to twenty thousand dollars and interest from date of payment, besides the costs and disbursements of this action.

Dated November 12, 1863.

KAUFMANN, FRANK & WILCOXSON,
Plaintiffs' Attorneys.

6 (Endorsed): N. Y. supreme court. George F. W. Bartels et al., vs. Heman J. Redfield, late collector, &c. Summons. Kaufmann,

Frank & Wilcoxson, plaintiffs' attorneys. I hereby admit due service on me of a copy of within summons, at Batavia, Genesee Co., N. Y., this 16th day of November, 1863, Heman J. Redfield, defendant.

7 Supreme court, State of New York.

HEMAN J. REDFIELD *ads.* GEORGE F. W. BARTELS & AL. } Notice of appearance.

SIR: You will please take notice that I am retained by, and appear as attorney for, Heman J. Redfield, the defendant in this action, and demand service of a bill of particulars of the plaintiffs' claim herein, and a copy of their complaint, upon me, at my office in the U. S. court buildings, Nos. 41 and 43 Chambers street, in the city of New York.

Yours, &c.,

E. DELAFIELD SMITH,
Attorney for Defendants.

To K. F. & W., Esqs., *Plaintiffs' Attorneys.*

(Endorsed:) N. Y. supreme court. H. J. Redfield ads. Geo. F. W. Bartels & al. Notice of appearance. E. Delafield Smith, defendant's attorney.

8 The President of the United States of America to the judge of the supreme court of the State of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you, against H. J. Redfield, defendant, by G. F. W. Bartels and al., plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 5th day of March, 1864, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness, Roger B. Taney, esquire, Chief-Justice of the Supreme Court of the United States, the 20th day of February, in the year one thousand eight hundred and sixty-four.

[L. S.]

KENNETH G. WHITE,
Clerk.

E. DELAFIELD SMITH,
Defendant's Attorney.

9 (Endorsed:) U. S. circuit court. Redfield ads. G. F. W. Bartels & al. Copy certiorari. E. Delafield Smith, defendant's attorney. Sir: Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, February 20, 1864. Yours, &c., E. Delafield Smith, defendant's attorney.

10 Circuit court of the United States for the southern district of New York.

GEORGE F. W. BARTELS ET AL., PLAINTIFFS,
against
HEMAN J. REDFIELD, LATE COLLECTOR of the port of New York, defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The plaintiffs, by Kaufmann, Frank & Wilcoxson, their attorneys, come here into court and suggest and give the court now here to understand and be informed that heretofore, to wit, on the 14th day of November last past, an action was commenced in the supreme court of the State of New York in and for the city and county of New York, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the office of the clerk of the city and county of New York, he being also the clerk of the supreme court, on the 14th day of November, 1863.

That the defendant afterwards, by E. Delafield Smith, esq., his
11 attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards on the 20th day of February, in the year of our Lord one thousand eight hundred and sixty-four, the said action was in due form of law removed by writ of certiorari, for further prosecution and trial, into this court, according to the act of Congress in such case made and provided, and the clerk of the said supreme court did thereupon return the said writ, with the summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs now, according to law, by their attorneys aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 14th day of November, 1863, at the City of New York, in the southern district of New York aforesaid, was indebted to the said plaintiffs in the sum of $1,500 dollars by order of court of January 8th, 1881, increased to twenty thousand dollars and interest from date of payment, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other moneys by the said plaintiffs
12 before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this court mentioned, when the defendant should be

thereunto afterwards requested. And whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiffs, of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiffs, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the plaintiffs in the further sum of $1,500 dollars, of lawful money as aforesaid; and being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested. Nevertheless the said defendant (although often requested, &c.), has not yet paid the said several sums of money above mentioned, or
13 any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs has hitherto wholly refused and still does refuse, to the damage of the said plaintiffs of 1,500 dollars, by order of court of January 8, 1881, increased to twenty thousand dollars and interest from date of payment. And therefore the plaintiffs bring suit, &c.

KAUFMANN, FRANK & WILCOXSON,
Plaintiffs' Attorneys, 39 *Nassau Street.*

(Endorsed:) U. S. circuit court. G. F. W. Bartels, et al., plaintiffs, *vs.* Heman J. Redfield, late collector of the port of New York, defendant. Declaration. Take notice that on filing a declaration in this cause, with a copy of which you are hereby served, a rule has been entered in the book of common rules, kept in the office of the clerk of this court, requiring the within-named defendant to plead to said declaration within twenty days after service of a copy of said declaration, and a notice of said rule or judgment on his attorney.

New York 186 .

KAUFMANN, FRANK & WILCOXSON,
Plaintiffs' Attorneys, 39 *Nassau street.*

To E. DELAFIELD SMITH, Esq.,
Defendant's Attorney, 41 *Chambers street.*

Service of a copy of within is hereby admitted.

E. D. S.,
Defendant's Attorney.

New York, March 30, 1864.

14 United States circuit court, southern district of New York.

HEMAN J. REDFIELD
ads.
G. F. W. BARTELS, ET AL. } Plea.

And the said defendant, Heman J. Redfield, by E. Delafield Smith, his attorney, comes and defends the wrong and injury, when, &c., and says that

he did not undertake and promise, in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, &c.

E. DELAFIELD SMITH,
Defendant's Attorney.

To K., F. & W., Esq.,
Plaintiffs' Attorneys.

(Endorsed:) U. S. circuit court. Heman J. Redfield, ads. G. F. W. Bartlets et al. Plea copy. E. Delafield Smith, attorney for defendant. Due service of a copy of within is hereby admitted. New York, April 20th, 1864. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, April 20th, 1864. E. Delafield Smith, defendant's attorney. To esq., plaintiffs' attorneys.

15 THURSDAY, *April 21st*, 1864.

The court meets pursuant to adjournment, and is opened by proclamation.

Present, Hon. Judge Hall.

JAMES BENKARD ET AL. *vs.* HEMAN J. REDFIELD. } Kaufmann, Frank & Wilcoxson, $5,000. E. D. Smith.

On motion of Mr. Wilcoxson, ordered inquest.

Jurors sworn: Edward Moore, Edward W. Ketchum, Joseph M. Greely, Franz C. Kiettas, Joshua Monroe, Patrick A. Bowen, Joseph F. Brush, Waldo Phillips, Godfrey Biering, F. Reineking, Peter Berg, Thomas D. Stetson.

By consent of counsel the jury find a verdict for the plaintiffs in the above-entitled action for excess of duty with interest thereon illegally exacted from plaintiffs, and paid under protest to defendant, and not barred by the statute of limitations, on commissions over one and one-half
16 per centum on merchandise imported by the plaintiffs at New York, from Great Britain; on commissions over two per centum on merchandise imported by plaintiffs at New York from the Continent of Europe (except Paris); on the discount of two and one-half per centum disallowed on linens imported at New York from Ireland; on charges on merchandise imported at New York from Ireland; on charges on merchandise imported at New York for the transportation of the goods from the interior of the country by railroad or water carriage incurred prior to the time of exportation; on coastwise and transportation charges from Ireland and Scotland to England on merchandise imported at New York from Ireland and Scotland via England; and on additions to make market value of said merchandise at London and Liverpool; on transportation charges from the Continent of Europe to Great Britain, on merchandise imported at New York from the Continent of Europe via Great Britain; on merchandise imported by the plaintiffs at New York, and invoiced in Bremen

Thalers, by the Bremen Thaler having been computed in assessing duties at a higher rate than seventy-one cents, the rate at which it should by law have been computed; the amount of excess of duties exacted from the plaintiffs, and paid by the defendant, and embraced in the plaintiffs' bill of particulars to be adjusted by the clerk of the court or his deputy. It is expressly stipulated that in case it shall appear on the adjustment or otherwise in any case that the suit was not brought within the time prescribed by statute of limitations, or that the question of time-
17 liness of protest, or the question of a sufficiency of a continuous or prospective protest shall be involved, the verdict shall be opened and opportunity to appeal be given to, and at the option of the district attorney.

A certificate of probable cause to be entered in each case.

The right to appeal or writ of error as above not to be reserved to the district attorney, unless the amount involved be sufficiently large to allow such writ of error.

G. F. W. BARTELS ET AL. *vs.* THE SAME.	The same counsel, jury, and a like verdict.
H. HOLTHAUSEN *vs.* SAME.	The same counsel, jury, and a like verdict.
C. E. BORSDORFF ET AL. *vs.* SAME.	The same counsel, jury, and a like verdict.

(Endorsed:) U. S. circuit court. South. district of New York. G. F. W. Bartels et al vs. Heman J. Redfield, and other cases. Verdict, April 21, 1864.

18 THURSDAY, *March* 16*th*, 1865.

The court meets pursuant to adjournment, and is opened to proclamation.

Present. Hon. Judge Shipman.

In the matter of the adjustments of suits against the collector of customs.

Ordered, That all the orders heretofore made by this court, referring certain suits against the collector of the port of New York to the clerk of this court for adjustment, be and the same are here by revoked, except as to such cases the adjustment of which has actually commenced before him.

(Endorsed:) Bartels v. Redfield. Copy order revoking references to clerk. March 16, 1865.

19 SATURDAY, *July* 1*st*, 1865.

Before the Hon. Samuel Nelson, at Cooperstown.

In the matter of the adjustments of suits against the collector of customs of New York.

Ordered, That all suits in which Kaufmann, Frank & Wilcoxson are attorneys of record for the plaintiffs, references to the clerk in which have been revoked, by the order of March 16th, 1865, be and the same are hereby referred to the collector of the port for adjustment.

(Endorsed:) Bartels vs. Redfield. Copy order referring certain suits to collector. July 1, 1865.

20 United States circuit court, southern district of New York.

G. F. W. BARTELS AND AL.
vs.
HEMAN J. REDFIELD, LATE COLLECTOR OF the port of New York.
} October 18th, 1869. E. Delafield Smith, plaintiffs' attorney.

On reading and filing a consent in writing signed by Kaufmann, Frank & Wilcoxson, esquires, attorneys for the above-named plaintiffs, and on motion of E. Delafield Smith:

Ordered, That the said E. Delafield Smith be substituted in the place of the said Kaufmann, Frank & Wilcoxson, as attorney for the said plaintiffs.

21 At a term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

Verdicts, April 19th, 1864.

A. ALDRIDGE ET AL.
vs.
HEMAN J. REDFIELD,
} And other cases.

Verdicts, April 21st, 1864.

GEO. F. W. BARTELS ET AL.
vs.
HEMAN J. REDFIELD,
} And other cases.

On motion of E. Delafield Smith, of counsel for the respective plaintiffs in the above-entitled causes, Geo. Bliss, esq., U. S. attorney,
22 appearing for the several defendants.

It is ordered, That the referee therein, in adjusting any of the above causes, shall not exclude from his report any item or items for the reason that said item or items were paid more than six years before the commencement of suit, unless it shall appear that the statute of limitations was duly pleaded by the defendant in each case, and the referee *in*instructed to include such items in his reports and statements unless the statute has been pleaded.

But the defendant may, within thirty days after the service of bills of

particulars in the cases in favor of C. E. Borsdorff et al., William Loeschigk et al., and J. A. Ubsdell et al., make such application as he may be advised, with a view of procuring to be determined the question, whether the actions in favor of the same plaintiffs, in which A. W. Griswold is attorney, and those named herein are all entitled to be maintained against the defendant, and if all are not entitled to be so maintained, then of determining which shall be so maintained, and no proceedings shall be taken in such mentioned actions until said thirty days have expired.

(Endorsed:) U. S. circuit court. South. dist. of New York. George F. W. Bartels et al. vs. Heman J. Redfield & other cases. Order instructing referee, &c. A. W. Griswold, of counsel to pl'ff.

23 United States circuit court, southern district of New York.

G. F. W. BARTELS ET AL.
vs.
HEMAN J. REDFIELD, LATE COLLECTOR OF the port of New York.

September 26, 1878. Wm. Nelson Cromwell, attorney for plaintiffs.

On reading and filing the consend in writing of the attorneys in fact (Josephine Douglas and Malsolm Douglas, as executors, &c.) of the above-named plaintiffs, and the motion of William Nelson Cromwell, ordered that the said Wm. Nelson Cromwell be and he is hereby substituted in the place and stead of E. Delafield Smith, dec'd, as attorney for the said plaintiffs.

24 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, E. E. FRANCOIS, and P. A. H. Renauld.
vs.
HEMAN J. REDFIELD.

O. S. 1596.

GEORGE F. W. BARTELS, P. A. H. RENAULD, and E. E. Francois.
vs.
AUGUSTUS SCHELL.

O. S. 1623.

On reading and filing the annexed authority of Renauld, Francois & Co., the above-named plaintiffs, dated January 27th, 1880, addressed to Marsh, Wilson & Wallis. Now on motion of Marsh, Wilson & Wallis, it is ordered that the said Marsh, Wilson & Wallis be, and they are hereby, substituted as attorneys of record for the plaintiffs in the above entitled actions in place of E. Delafield Smith, deceased.

Dated January 29th, 1880.

SAM'L BLATCHFORD.

(A copy.)
[SEAL.]

JOHN I. DAVENPORT,
Clerk.

25 (Endorsed:) U. S. circuit court. Southern dist. New York. George F. W. Bartels & ors. vs. Heman J. Redfield, George F. W.

Bartels & ors. vs. Augustus Schell. Order. Marsh, Wilson & Wallis, pl'ffs' att'ys. Service of a copy of the within order and notice is hereby admitted. Dated February 6, 1880, Stewart L. Woodford, U. S. attorney, att'y for def't. Please take notice that the within is a copy of an order this day entered in the within entitled actions, substituting us as the attorneys of the plaintiffs therein in the place and stead of E. Delafield Smith, deceased. Dated January 29th, 1880. Yours, &c., Marsh, Wilson & Wallis, att'ys for pl'ffs. To Stewart L. Woodford, esq., U. S. district attorney, post-office building, New York City.

26 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, E. E. FRANCOIS, and P. A. H. Renauld,
vs.
HEMAN J. REDFIELD. } O. S. 1596.

GEORGE F. W. BARTELS, P. A. H. RENAULD, and E. E. Francois.
vs.
AUGUSTUS SCHELL. } O. S. 1623.

On reading and filing the subjoined consent, it is ordered, that the appearance of Wm. Nelson Cromwell, esq., as attorney for the plaintiff in each of the above entitled actions, entered in the book of common rules on or about September 26th, 1878, be, and the same is hereby, withdrawn and cancelled of record.

Dated May 4, 1880.

SAM'L BLATCHFORD.

We consent to the entry of an order in the foregoing terms.

Dated May 3, 1880.

WM. NELSON CROMWELL.
SULLIVAN & CROMWELL.

(A copy.)
[SEAL.]

JOHN I. DAVENPORT,
Clerk.

27 (Endorsed:) U. S. circuit court. South dist. of New York. George F. W. Bartels et al., O. S. 1596, vs. Heman J. Redfield. The same v. O. S. 1623 Augustus Schell. Certified copy. Consent and order withdrawing appearance. Wm. Nelson Cromwell, atty., Drexel building. Original filed N. Y., May 4, 1880. Service of a copy of within certified copy consent and order is hereby admitted. Dated May 5th, 1880. Stewart L. Woodford, U. S. att'y for def't. Wm. Nelson Cromwell. Marsh, Wilson & Wallis, pl'ffs' att'ys.

28 U. S. circuit court.

GEORGE W. T. BARTELS ET AL.
vs.
HEMAN J. REDFIELD.

On reading and filing the annexed consent of the attorneys for the respective parties, and the certificate of the surrogate of the county of Genesee,

annexed to a certain order entitled C. Gignoux et al. vs. Heman J. Redfield, and other cases, dated September 11th, 1878, and filed in the office of the clerk of this court, and on motion of Marsh, Wilson & Wallis, attorneys for the plaintiffs, it is ordered, that Constance C. Redfield, as executrix, and Frank B. Redfield, as executor, of the last will and testament of Heman J. Redfield, deceased, be, and they are hereby, substituted as defendants in the above entitled action, in place and stead of Heman J. Redfield, deceased.

SAM'L BLATCHFORD.

Dated May 22d, 1880.
A true copy.

JOHN I. DAVENPORT,
Clerk.

29 U. S. circuit court.

GEORGE W. T. BARTELS ET AL.
vs.
HEMAN J. REDFIELD.

The defendant in the above entitled action, Heman J. Redfield, having died on or about the 22nd day of July, 1877, and letters testamentary upon the estate of the said Heman J. Redfield having been granted to Constance C. Redfield and Frank B. Redfield, both of Batavia, on the 3d day of May, 1878, as appears by the certificate of the clerk of the surrogate's court of the county of Genesee, in the State of New York, dated July 5th, 1878, and annexed to a certain order entitled C. Gignoux et al. vs. Heman J. Redfield, and other cases, dated September 11th, 1878, and filed in the office of the clerk of this court, it is hereby consented that an order be entered substituting Constance C. Redfield as executrix and Frank B. Redfield as executor of the last will and testament of Heman J. Redfield, deceased, as defendants in the above entitled action.

Dated May 22d, 1880.

MARSH, WILSON & WALLIS,
Pl'ffs' Att'ys.
STEWART L. WOODFORD,
U. S. Att'y for Def't.

(Endorsed:) O. S. 1596. U. S. circuit court. George W. T. Bartels et al. vs. Heman J. Redfield. (Certified copy.) Consent and order substituting Constance C. Redfield exr. & Frank B. Redfield exr., &c., as defendants. Marsh, Wilson & Wallis, pl'ffs' att'ys, 48 Wall. st. Service of a copy admitted May 25, 1880. (Original.) Stewart L. Woodford, U. S. Attorney, att'y for def't. Filed May 22, 1880.

30 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD, EXECUTRIX, AND Frank B. Redfield, executors, &c.

On the annexed consent, and on motion of Marsh, Wilson & Wallis, attorneys for plaintiffs, it is ordered that the title of a certain order, made and

filed May 22nd, 1880, and entitled George W. F. Bartels et al. vs. Heman J. Redfield, be annexed to read "George F. W. Bartels et al. vs. Heman J. Redfield."

Dated June 30, 1880.

SAM'L BLATCHFORD.

A copy.

JOHN I. DAVENPORT,
Clerk.

H. H. M.
Consented to.

STEWART L. WOODFORD,
U. S. Att'y for D'f't.

(Endorsed:) O. S. 1596. U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield,
31 exr's, &c., et al. Certified copy. Consent and order amending title, &c. Marsh, Wilson & Wallis, pl'ffs' att'ys. Service of a copy admitted July 1st, 1880. Stewart L. Woodford, U. S. att'y, for def't.

32 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, E. E. FRANCOISE, and P. A. H. Renauld,
vs.
CONSTANCE C. REDFIELD AND FRANK B. Redfield et al. } O. S. 1596.

GEORGE F. W. BARTELS, P. A. H. RENAULD, and E. E. Francois,
vs.
AUGUSTUS SCHELL. } O. S. 1623.

Upon the subjoined consent of Edward Jordan, esq., and on motion of Marsh, Wilson & Wallis, esqrs., attorneys for plaintiffs, it is ordered that the appearance of said Jorden be, and the same is hereby, withdrawn and cancelled.

(Signed) SAMUEL BLATCHFORD.

Dated December 31st, 1880.

A copy.

[SEAL.]

JOSEPH M. DEUEL,
Clerk.

My appearance as attorney for the plaintiffs in the above-entitled actions having been entered by mistake on August 10th, 1880, I hereby consent to the entry of an order in the above terms, withdrawing my ap-
33 pearance as attorney for the plaintiffs.

Dated, December 30th, 1880.

EDWARD JORDAN,
Atty. for Plaintiffs.

(Endorsed:) U. S. circuit court, south. dist. of New York. George F.W. Bartels et al. vs. Constance C. Redfield et al., exrs., &c. The Same

vs. Augustus Schell (O. S. 1623). Certified copy. Consent and order withdrawing appearance of Edward Jordan, esq. Marsh, Wilson & Wallis, plaintiffs' attys. Service of a copy admitted January 4th, 1881. Edward Jordan.

34 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, PETER A. H. RENAULD, and EMANUEL E. FRANCOIS,
vs.
CONSTANCE C. REDFIELD, EXECUTRIX, AND Frank B. Redfield, executor, of the estate of Heman J. Redfield, deceased. } O. S. 1596.

THE SAME
vs.
AUGUSTUS SCHELL. } O. S. 1623.

Upon reading and filing plaintiffs' affidavit and notice of motion herein, dated June 28th, 1880, and upon the papers and proceedings in the above entitled causes, on motion of Messrs. Marsh, Wilson & Wallis, attorneys for plaintiffs, Stewart L. Woodford, esq., U. S. attorney, appearing for the defendants in opposition thereto, it is ordered that plaintiffs have leave to amend the summons and declaration in the first above entitled action by increasing the damages therein set forth to twenty thousand dollars and interest from the dates of payment, and in the
35 second above entitled action by increasing the damages in the summons and declaration set forth to thirty-five hundred dollars and interest from the dates of payment.

Dated January 8th, 1881.

SAML. BLATCHFORD.

E. C. M.
A true copy.

JOSEPH M. DEUEL,
Clerk.

(Endorsed:) U. S. circuit court, south. dist. of New York. George F. W. Bartels et al. vs. Constance C. Redfield (O. S. 1596) et al., exrs., &c. The Same vs. Augustus Schell (O. S. 1623). (Certified copy.) Order increasing amounts of damages in summons and declaration. Marsh, Wilson & Wallis, plffs.' att'y', 48 Wall st. Service of a copy admitted January 14, 1881. Original filed Jan'y 8, 1881. Stewart L. Woodford, U. S. attorney, attorney for def't.

36 U. S. circuit court, southern district of New York.

G. F. W. BARTELS ET AL.
against
CONSTANCE C. REDFIELD, EX'X, AND Frank B. Redfield, Ex'r. } Plaintiff's bill particulars. O. S. 1596.

The defendants herein are notified that the plaintiff's claim is for excess of duty paid on charges and commissions on all importations made into

New York on which duties were paid to the defendants between November 1st, 1853 and July 1st, 1857, and to sustain said action the plaintiffs will rely on the protests on file in the custom-house by the vessels, the dates of the entry of which are below, viz:

Name of vessel.	Date of entry.	Date of protest.	No. of protest.	Name of vessel.	Date of entry.	Date of protest.	No. of protest.
	1853.				1854.		
Corinthian	Nov. 21,			Hemisphere	Dec. 7,		
Constitution	" "				1855.		
Maid of Orleans	" 22,			Corinthian	Jan. 17,		
I. Bell	" 25,			Alleganian	" 24,		
Advance	" "			C. Crocker	Feb. 10,		
Empire	" 29,			38 Havre	" 12,		
Jno. Wesley	Dec. 16,			Olivia	" 20,		
Connecticut	" 19,			Opher	" 24,		
Admiral	" 22,			A. Metcalf	Apr. 3,		
	1854.			N. York	" 24,		
37 Art Union	Jan. 4,			Connecticut	Sept. 29,		
Tropic	" 9,			Mercury	Oct. 2,		
S. E. Howell	" 19,			Germania	" 19,		
Zurich	" "			"	" 19,		
R. G. Winthrop	" 25,			Wm. Tell	" 28,		
Erie	Feb. 14,			Republic	Nov. 19,		
Trumbull	" 23,			Havre	" "		
Satellite	Apr 21,				1856.		
Jno. Wesley	" 24,			Admiral	Mar. 5,		
Metropolitan	May 1,			Cumberland	" 12,		
Speculation	" "			F. Childers	Apr. 23,		
Milwaukee	" 4,			R. L. Lane	" 30,		
Challenge	" 18,			Saratoga	May 10,		
Hungarian	Aug. 6,			St. Nicholas	" 14,		
Delaware	" 26,			Ticonderoga	" 28,		
Vancluse	Sept. 9,			Middlesex	June 30,		
Sp'k of the Ocean	" 25,			Toulon	Aug. 18,		
Memphis	Oct. 6,			Chase	Oct. 4,		
F. McDonald	" 24,			Exchange	" 20,		
Milwaukee	" 30,			St. Jean	" 22,		
E. P. Stringer	Nov. 2,			C. C. Dow	Nov. 14.		
St. Louis	" 15,			Volant	" 26.		
Canvas Back	" 27,						

39 "WAREHOUSE ENTRIES."

	1853.				1854.		
C. de le Mer Noire	Mar. 29,			Art Union	May 9, '54		
Do	" "			Heidelberg	" 17,		
S. America	Oct. 21,			S. Park	" 13,		
William	Feb. 25,			White Cloud	Nov. 17, '53		
Heidelberg	Aug. 23,			C. Magnus	Jan. 13, '54		
Helvetia	Dec. 2,			Isaac Bell	Apr. 4,		
Zurich	Sept. 13,			Northern Belle	May 23,		
Euphrosine	Apr. 21,			Advance	May 20,		
S. M. Fox	Aug. 25,			St. Dennis	Nov. 23, '53		
Irene	" 31,			Howard	Dec. 20,		
Trumbull	Sept. 6,			Awede	July 7, '54		
W. H. Wharton	Nov. 14,			M. Livingston	June 13,		
Germania	Sept. 6,			Zurich	" "		
Vancluse	Nov. 19,			Cumberland	June 5,		
Havre	Oct. 20,			Speculation	Apr. 27, '54		
Bavaria	Feb. 25, '54			Scioto	June 29,		
White Cloud	Nov. 16, '53			Stormaway	July 11,		
Helvetia	Aug. 18,			Juventa	June 19,		
E. Forest	Mar. 1, '54			Havre	" 13,		
Schiller	Jan. 21,			Hungarian	Aug. 14,		
Gustave	Apr. 21, '53			41 Dalaware	Aug. 26,		
Denmark	July 18,			P. Blauch	Apr. 5, '53		
Aglad	Sept. 13,			Lucy	Mar. 9, '54		
	1854.			S. of the Ocean	Sept. 20,		
Wm. Nelson	Apr. 4,			W. Laytin	Oct. 26,		
Electric	Mar. 25,			Memphis	" 5,		
Hermann	Apr. 1, '53			W. H. Wharton	" 16,		
40 Chesapeake	Apr. 11, '54			Far West	" 26, '54		
Cheshire	" 15,			Bavaria	Dec. 6,		
S. G. Hyde	" 24,			Admiral	Dec. 23, '54		
Lucy	Mar. 9,			Irene	" 28,		
J. Holmes	Apr. 24,			Corinthian	Jan. 19, '55		
Metropolitan	" "			Eagle	" 17,		
Weather Gage	Nov. 18, '53			A. Langdon	" 12,		

"WAREHOUSE ENTRIES"—Continued.

Name of vessel.	Date of entry.	Date of protest.	No. of protest.
	1855.		
St. Bernard	Feb. 13,		
New York	Apr. 18,		
A. Metcalf	Mar. 28,		
M. Ogden	Apr. 24,		
Confederation	" "		
Wm. F. Safford	" 27, '54		
G. H. Townsend	Nov. 29,		
North Wind	Apr. 27, '55		
F. A. Palmer	" 18,		
Bavaria	May 1,		
Splendid	" 9,		
Metropolis	" 18,		
Switzerland	June 8,		
42 St. Nicholas	May 9,		
V. Reed	" 24,		
Helvetia	June 21,		
Heidelberg	" 23,		
Mercury	May 24,		
St. Paul	June 23,		
J. Hancock	" 25,		
H. Harbeck	" 23,		
St. Nicholas	Sept. 6,		
Mercury	" 27,		
Splendid	" 17,		
Admiral	" 22,		
C. Magnus	June 15, '53		
Connecticut	Sept. 27, '55		
Helvetia	Oct. 22,		
M. Ogden	" 1,		
M. Livingston	Sept. 18,		
R. L. Lane	Nov. 20,		
Switzerland	Oct. 22,		
Mountaineer	" 26,		
Venice	Nov. 15,		
L. Harward	Dec. 27,		
Confederation	" "		
St. Nichols	" "		
Zurich	" 28,		
Admiral	March 1, '56		
F. A. Palmer	" 28,		

Name of vessel.	Date of entry.	Date of protest.	No. of protest.
	1856.		
43 Warren	May 27,		
Havre	Mar. 28,		
Germania	" "		
Switzerland	" "		
Fairfield	May 7,		
Zurich	June 4,		
Consul	May 21,		
Hemisphere	June 12,		
Uncle Toby	May 26,		
Vancluse	July 3,		
Confederation	June 12,		
G. F. Patten	" "		
Chase	Oct. 4,		
R. D. Shepherd	Sept. 16,		
W. Fisk	" 20,		
Helvetia	" 16,		
Emma	" 27,		
Mercury	Nov. 17,		
Rattler	Oct. 18,		
Vancluse	Nov. 17,		
Bavaria	Sept. 27,		
E. Hamilton	Nov. 3, '56		
Hellespont	Dec. 19,		
Betsy Ames	Oct. 11,		
Vision	Jan. 5, '57		
Admiral	Nov. 15, '56		
Havre	" 27,		
Wm. Tell	" 29,		
44 Red Rover	Jan. 5, '57		
Gauntlet	" 19,		
N. D. des Victoires	Feb. 17,		
Helvetia	Feb. 7, '57		
W. Frothingham	" 17,		
Zurich	" 19,		
Wm. Tell	Apr. 20,		
Oregon	" 7,		
Wild Wave	" 13,		
Tornado	" 20,		
Admiral	" 11,		

E. & O. E.

Above intended to embrace all importations upon which excessive duties on charges and commissions were paid by Renauld & Francois and Renauld, Francois & Co., between Nov. 1st, 1853, and July 1st, 1857.

Yours, &c.,

MARSH, WILSON & WALLIS,
Plff's Attys.

To STEWART L. WOODFORD, Esq.,
U. S. Atty. for Deft.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. G. F. W. Bartels et al. vs. Constance C. Redfield et al., Exrx., &c. Plaintiffs' bill of particulars. Marsh, Wilson & Wallis, plaintiffs' attys. Due service of within bill of particulars is hereby admitted. Dated May 11, 1882. Stewart L. Woodford, U. S. Atty. and atty. for defts. T. G.

45 U. S. circuit court, southern district of New York.

ADRIAN ISELIN ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EXR., ETC. } O. S. 1551.

GEORGE F. W. BARTELS ET AL.
vs.
SAME. } O. S. 1596.

On reading and filing the annexed affidavit of A. W. Griswold, with the papers and notice of motion, and after hearing A. W. Griswold in favor of said motion and Howard for Stewart L. Woodford, U. S. attorney, in opposition thereto, and due deliberation had, it is ordered that the above-entitled actions be, and they are hereby, referred to Joseph M. Deuel, clerk of this court, as referee, for the adjustment according to this verdict, of the plaintiffs' claim upon the bill of particulars served in each case, and his compensation, if not agreed upon between the parties, shall be fixed at such sum as the court shall deem reasonable.

New York, June 30th, 1882.

W. J. WALLACE.

(Endorsed:) O. S. 1596. U. S. circuit court, so. dist. of New York. Order reference to J. M. Deuel, esq. June 30, '82.

46 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD, AS EX'R, ET AL., ETC. } O. S. 1596.

On the annexed affidavit let the plaintiffs in the above-entitled action show cause before me, at the U. S. circuit court rooms, in the post-office building in the city of New York, on the third day of October, 1882, at 11 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, why the verdict in this action should not be vacated, and why the defendant should not be allowed to amend his plea by setting up, as additional defenses therein, the pendency of another suit for the same cause or causes of action, res adjudicata and payment, and why such other and further relief should not be granted as to the court may seem meet and just.

And until the hearing and determination of this order to show cause let all proceedings on the part of the plaintiffs be stayed.

And it is further ordered that a copy of this order and the above-mentioned affidavit be served upon the plaintiffs' attorneys at least eight
47 days before the return of this order.

Dated September 19, 1882.

(Sgd.) WM. J. WALLACE.

(Endorsed:) O. S. 1596. Dft. order to show cause and stay. Sept. 19, '82.

48 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms in the city of New York, on the twentieth day of October in the year of our Lord one thousand eight hundred and eighty-two.

Present: The honorable , circuit judge.

G. F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL. } O. S. 1596.

SAME
vs.
AUGUSTUS SCHELL. } O. S. 1623.

On motion of Marsh, Wilson & Wallis, att'ys for the plaintiffs, Stewart L. Woodford, esq., appearing for the defendants, it is ordered, that the orders hertofore made in these cases on September 19th, 1882, be
49 modified by expunging therefrom the "stay of all proceedings on the part of the plaintiffs, who are at liberty to go on with the references, but no final reports to be made by the referee until the further order of this court.

W. J. WALLACE.

(Endorsed:) U. S. circuit court. G. F. W. Bartels et al. vs. Redfield et al. Same vs. Schell. Certified copy. Order. Marsh, Wilson & Wallis, att'ys for plff's. (Endorsed:) Filed Oct. 20, 1882.

50 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'RS, &C. } O. S. 1596.

On reading and filing the defendants' notice of motion and order to show cause, dated September 19th, 1882, and after hearing Stewart L. Woodford, esq., U. S. attorney, by Thomas Greenwood, esq., and E. M. Morse, esq., in favor of said motion, and A. W. Griswold, esq., representing Messrs. Marsh, Wilson & Wallis, attorneys for plaintiffs, in opposition thereto, and due deliberation had, it is ordered that said motion for leave to plead res adjudicata be, and the same is hereby, denied, and the stay of proceedings heretofore granted be vacated.

WM. J. WALLACE.
[SEAL.] J. M. DEUEL,
Clerk.

A copy.

(Endorsed:) U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield et al., ex'rs, &c. Certified copy. Order denying defendants' motion and vacating stay, &c.
51 Marsh, Wilson & Wallis, pl'ffs' att'ys. A. W. Griswold, of coun-

sel. Filed in court Nov. 11, 1882. Due service of a copy of within certified copy order is hereby admitted. Dated Nov. 13, 1882. S. L. Woodford, U. S. atty,

52 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'RS, &C.,

Under an order of the court made and entered herein June 30th, 1882, this cause was referred to me to adjust the amount due to the plaintiffs under the verdict obtained April 21, 1864, for excess of duties exacted on charges and commissions above the legal rate upon importations by the plaintiffs.

The plaintiffs have been represented before me by Mr. A. W. Griswold and the defendants by Messrs. E. M. Morse and Thomas Greenwood.

All the evidence offered has been taken and duly considered, and I find therefrom as matters of fact as follows:

First. That during the years 1850 and 1851 P. A. H. Renauld and E. E. Francois were partners in business in the city of New York trading under the name and style of Renauld & Francois, and that from about November, 1850, to and including December 31, 1851, the plaintiff, Geo. F. W. Bartels, was in their employ at a stated salary, the same being credited to him on the books of the firm.

53 Second. That after December 31, 1851, said Bartels continued with said firm without being credited on the firm's books with any sum as salary, that his accounts thereafter were kept in the same way as were the accounts of the other plaintiffs and different than the accounts of the employés, to wit, he was charged with all amounts drawn out and this was balanced by credits to "transfer account" which said transfer account was kept in a private book by one of the partners and does not appear on the general books of account of said firm until January 1, 1856.

Third. That on January 1, 1856, a capital account was opened by said firm with each partner wherein said Bartels appears to be credited with the sum of $15,359.22 and on June 30, 1856, was further credited with the sum of $3,427.29 being "10% of this one-half year's net profit."

Fourth. That on May, 1856, the firm name was changed to Renauld, Francois & Co., the partners being the plaintiffs herein. No written transfer seems to have been made, nor were the books balanced; the accounts of the new firm were continued in the old books. The bills receivable of the prior firm were collected by the new firm and the bills payable of the prior firm were assumed and paid by the new firm. That said firm of Renauld, Francois & Co. continued as originally constituted until July, 1872, and that Bartels' interest therein subsequent to July 1, 1856, was 25%.

54 Fifth. That the firm of Renauld & Francois and Renauld, Francois & Co. made the importations referred to and embraced in the bill of particulars and statement in this case, from Reims, in France, and duly protested against the payment of duties on the matter referred to in this suit.

Sixth. That said importations consisting of champagne wines invoiced

from Reims, the principal market for champagne in France, to the plaintiffs, and that many of said invoices contain the following items: Transport au Havre Frais Jusqu 'a bord, meaning, respectively, transportation charges from Reims to Havre, Reims being an inland and Havre a sea-port town, and other and additional charges and expenses incurred in Havre in transhipping such goods, wares, and merchandise from the railroad in Havre to and putting on board vessels there bound for New York. Each of said items being expenses incurred while such merchandise was in transitu.

Upon the foregoing facts I find as conclusions of law, that George F. W. Bartels, P. A. Renauld, and E. E. Francois were each interested in the importations made under the name of Renauld & Francois and Renauld, Francois & Co., and also in the amount of duties illegally exacted by Heman J. Redfield, at that time collector of the port of New York,
55 and that they are therefore entitled to recover of the defendants as executrix and executor of said Redfields, as shown by the statement giving the items in detail, the sum of eighteen thousand five hundred seventy-seven and $\frac{85}{100}$ dollars ($18,577.85) as principal, together with interest on the various items up to April 21, 1864, amounting to twelve thousand forty-six and $\frac{96}{100}$ dollars ($12,046.96), making in the aggregate as due at the date of said verdict the sum of thirty thousand six hundred twenty-four and $\frac{81}{100}$ dollars ($30,624.81).

All of which is respectfully submitted.

N. Y., Dec. 14, 1882.

J. M. DEUEL,
Referee.

(Endorsed:) O. S. 1596. U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield et al., exrs. etc. Copy referee's report. Orignal filed Dec. 15, 1882.

56 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL. executors, &c. } O. S. 1596.

This cause coming on to be heard on defendants' exceptions to the report of Joseph M. Deuel, esq., to whom the case was referred for adjustment under the verdict taken therein April 21st, 1864, after hearing E. M. Morse, esq., and Thomas Greenwood, esq., of counsel for the defendants, in support of said exceptions, and Luther R. Marsh, esq., and A. W. Griswold, esq., of counsel for the plaintiffs, in opposition thereto; and again, upon re-argument, after hearing Thomas Greenwood, esq., in support of said exceptions, and William G. Choate, esq., and A. W. Griswold, esq., in opposition thereto, and due deliberation had, it is ordered:

1st. That defendants' exceptions to the allowance by the referee of a refund of duties paid by plaintiffs on the item designated in the invoices as "frais jusqu 'a bord," and also defendants' exceptions to the al-
57 lowance by the referee of interest computed with a rest at date of verdict, be, and the same are hereby, sustained, and defendants' other exceptions are hereby overruled.

2nd. It is further ordered, that said cause be referred back to the referee for re-adjustment in conformity to the decision of the court; and

3rd. It is further ordered, that the referee receive such evidence as the parties may present respecting the existence of laches which may affect the right of plaintiffs to recover interest under the decision of the Supreme Court in the case of "Redfield vs. Ystalyfera Iron Co."

4th. And it is further ordered, that the defendants have their disbursements incurred for re-argument, the same to be taxed by the clerk of this court.

WM. J. WALLACE.

Dated New York, May 16th, 1884.

A copy.
[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Endorsed:) O. S. 1596. U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield et al., exrs., &c. Certified copy. Order proposed by plffs and notice settlement. Marsh, Wilson & Wallis, plffs' attys. Service of a copy admitted,
58 dated New York, May 27th, 1884. Elihu Root, U. S. att'y and att'y for def'ts. Sir: Please take notice that the within form of order will be presented for allowance to Judge Wallace, in the U. S. circuit court, on May 9th, 1884, at 11 o'clock a. m., or as soon thereafter as counsel can be heard. Dated, May 8th, 1884. Yours, &c., Marsh, Wilson & Wallis, plffs' atty's. To Elihu Root, esq., U. S. att'y for d'f'ts.

59 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
against
CONSTANCE C. REDFIELD EXRS. ET AL.

By the order entered in the above action on May 16th, 1884, this case was referred back to me to correct the allowance of interest, to exclude from the adjustment the duties paid by plaintiffs upon the items designated in the invoices as "frais jusqu 'a bord," and directing the reception of such evidence as the parties may present respecting the existence of laches which may affect the right of plaintiffs to recover interest.

The respective parties appeared before me by counsel, the testimony presented was reduced to writing, which, with the exhibits presented and admitted, is herewith returned.

Excluding the duties paid by the plaintiffs upon the items designated on the invoices as "frais jusqu 'a bord" I find and report that the plaintiffs are entitled to recover under the verdict as principal the sum of fourteen thousand three hundred and ninety-four dollars and ninety-five cents. The interest computed upon this amount from the respective dates of payment to the date of this report amounts in the aggregate to the
60 sum of twenty-nine thousand nine hundred and eighty-eight dollars and fifty-five cents.

Upon the question as to whether the plaintiffs are responsible for this long delayed adjustment a just and equitable conclusion can be reached only by considering this individual case as one of a very large class, all

seeking the same object, to wit, the recovery of money illegally exacted with legal damages for its detention. It is to be borne in mind that the contest was not, as the title would imply, simply between individuals. Practically it was between the plaintiffs on one side and the Government on the other. The direction and conduct of the defence was in charge of Government officers who shaped every policy touching defence and payment, and the frequent changes of the individuals occupying such offices operated to introduce at different periods diversity of views and opinions and tended to, and did, prevent uniformity of action or a continuance for any considerable period of any well-defined policy. Government officers were the custodians of the documentary evidence necessary to maintain and adjust the cases, and when adjusted and judgments entered, the ordinary means of enforcing payment were not available. From a careful consideration of the evidence before me I am convinced of the correctness of the conclusion expressed on page 19 of Ex. T., that "the delay may be
61 more properly accounted for by the changes in the district attorney's office, and the changes of officers and policy in the Treasury Department."

The district attorney lays great stress upon the fact that another suit between the plaintiffs and against the same collector, covering practically the same period of time had been instituted and prosecuted to judgment and payment; that because the amount found due in this case might have been, but was not, included in that recovery is of itself laches on the part of the plaintiffs affecting their right to recover interest.

The evidence before me shows that it was through no fault of the plaintiffs that the amounts sought to be recovered here were not included in that action. The collector was the custodian of the papers required to maintain and adjust the claim, and when the adjustment in the former case was made the papers upon which this proceeding rests were not forthcoming, and these papers it is seen established a claim for over fourteen thousand dollars. Soon after the payment in that case the missing entries and invoices were found and a verdict was entered herein upon consent of the district attorney "for excess of duty with interest thereon." If the omission to include the amount in the former suit had been through any fault or negligence of these plaintiffs it was cured by that verdict. At one time since the verdict the adjustment in this case was nearly concluded, but the work was suspended, and I am unable to find that this suspension was through any fault of the plaintiffs.

62 I fail to see in the evidence before me any good and substantial grounds for a finding of laches on the part of plaintiffs which ought to deprive them of interest upon the money exacted of them by the Government and detained so long, and I therefore find and report that interest should be included in the judgment.

New York, June 1st, 1885.

Respectfully submitted.

J. M. DEUEL,
Referee.

J. R. T.

A copy.

[SEAL.] TIMOTHY GRIFFITH,
Clerk.

(Endorsed:) U. S. circuit court, southern district of New York. Geo. F. W. Bartels et al. vs. Constance C. Redfield, ex'rs, &c., et al.—O. S. 1596. Referee's report. U. S. circuit court, filed June 1, 1885. Timothy Griffith, clerk.

63 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &c.

This case coming on to be heard on exceptions taken by both plaintiffs and defendants to the report of Joseph M. Deuel, esq., the referee herein, filed June 1st, 1885, and after hearing Almon W. Griswold, esq., of counsel for plaintiffs, and in opposition to defendants' exceptions to said report, and Thomas Greenwood, esq., assistant U. S. attorney for defendants, in support of defendants' and in opposition to plaintiffs' exceptions to said report, and due deliberation had, it is ordered that both plaintiffs' and defendants' exceptions to the report of the referee are hereby overruled and said report is in all things confirmed.

And it is further ordered that interest on that total amount of principal, viz, $14,394.95, and interest found due by the referee up to June 1st, 1885, the date of this report, viz, $29,988.55, amounting in the aggre-
64 gate to $44,383.50, be computed from that date to the date of entry of judgment and included therein, with costs to be taxed.

Dated New York, April 19th, 1886.

WM. J. WALLACE.

(Endorsed:) O. S. 1596. U. S. circuit court, southern district of New York. G. F. W. Bartels et al., vs. C. C. Redfield et al., executors, &c. Copy. Order overruling pl'ffs' and def'ts' exceptions and confirming referee's report, &c. Marsh, Wilson and Wallis, pl'ffs' att'ys, A. W. Griswold of counsel.

65 This action having been commenced in the supreme court of this State on the 12th day of November, 1863, by personal service of summons, and the defendant having thereafter appeared, and on his petition said cause having been removed into this court, issue was there joined on April 20th, 1864, and said cause came on for trial before a judge of this court and a jury on the 21st day of April, 1864, when a verdict was rendered for the plaintiff with a reference to the clerk of the court to compute the amount of plaintiffs' damages, and the same having been computed and ascertained, now on motion of Marsh, Wilson & Wallis, plaintiffs' attorneys, it is ordered that George F. W. Bartels, E. E. Francois, and Peter A. H. Renauld, plaintiffs, recover against Constance C. Redfield, executrix, and Frank B. Redfield, executor, defendants, the sum of fifty thousand, six hundred and eleven and $\frac{98}{100}$ dollars damages and interest, and six hundred and ninety $\frac{50}{100}$ dollars costs, amounting in the aggregate to the sum of fifty-one thousand, three hundred and two dollars and forty-eight cents.

Judgment signed this 3rd day of October, 1887.

JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed:) O. S. 1596. U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield et
66 al., ex'rs, &c. Judgment roll. Marsh, Wilson and Wallis, plaintiffs' attorneys, A. W. Griswold of counsel. U. S. circuit court. Filed Oct. 3, 1887, 4 p. m., Timothy Griffith, clerk.

67 United States circuit court, southern district of New York.

GEORGE F. W. BARTELS, PETER A. H. RENAULD, and Emanuel E. Francois, *vs.* CONSTANCE C. REDFIELD AND FRANK B. REDFIELD, executors, &c., of Heman J. Redfield, deceased. } O. S. 1596.

Plaintiffs' and defendants' bill of exceptions.

And afterwards, to wit, at the April term, 1864, this cause came on to be tried before the honorable Nathan H. Hall, district judge of the United States for the northern district of New York, who was assigned to hold this court, and a jury, duly empanelled and sworn, to try the issues herein, plaintiffs appearing by their counsel, Kaufman, Frank & Wilcoxson, esqs.; the defendants' testator, Heman J. Redfield, appearing by his counsel, E. Delafield Smith, esq., U. S. district attorney.

The evidence showed that between the 1st day of November, 1853, and the 1st day of July, 1857, the firms of Renauld & Francois and Renauld, Francois & Co., as consignees, imported into the port of New York from Reims, in France, by a large number of vessels, as specified in their bill of particulars, certain champagne wines, invoiced to them in the French
68 language, and of which the following is a true copy of the first of such importations per "Corinthian," and entered November 14th, 1853, viz:

"Facture à huit cents paniers vin de champagne; charges par l'entremise de Messieurs Walbaum & Eebel, au Havre, franco à bord du Corinthian, Capt. Dyer, à l'addresse de Messieurs Renauld & François, à New-York, pour être vendus pour notre compte:

H. & C. No. 43,901 a 44,500, 600 paniers de 12 bouteilles.
" " 44,501 2 44,700, 200 " " 24[2] "

800 paniers contenant

7,200 bouteilles vin blanc mousseux Sillery, première qualité, à 2.53		f. 18,216
4,800 demi b't'les même vin, do., 1.35		6,480
		f. 24,696
Pour 7,200 bouteilles vides, à f. 27 le cent	f. 1,944	
" 4,800[2] " " " f. 18 le cent	f. 864	
		f. 2,808
Frais pour 800 paniers, à f. 2.60	2,080	
Pour transport au Havre, à f. 16 les 100 bou'tt'ls	1,536	
" frais jusqu'à bord " " 3 les 100 bou't'ls	288	
	3,904	
		f. 31,408

"S. E. & O.

"H. PIPER & Co.

"Je, Soussigné, J. C. Kunkelmann, associé de la maison H. Piper & Co., de Reims, déclare, sous serment, que la facture qui précède contient un compte fidèle et sincère des marchandises y détaillées à leur véritable valeur courante à Reims, et de tous les frais sur les dites marchandises, et que la facture n'est exempte d'autres escomptes ou rebais que de ceux véritablement accordés au commerce.

"Reims, 9 September, 1853.

69 "J. C. KUNKELMANN."

Of which the following is a translation:

"Invoice of eight hundred baskets champagne wine, transmitted by the intervention of Messrs. Walbaum & Ebel at Havre, free on board of the 'Corinthian,' Captain Dyer, to the address of Messrs. Renauld & Francois, of New York, to be sold for our account:

H. &. C. No. 43,901, at 44,500	600 baskets of 12 bottles	
" " 44,501, at 44,700	200 " " 24½ "	
	800 baskets, containing	
7,200 bottles white Mousseux Sillery wine, first quality, at 2.53 fcs.....		18.216
4,800 half bottles, same wine, do., 1.35.....		6.480
		fcs. 24,696
For 7,200 empty bottles, at f. 27 pr. hundred.....	f. 1,944	
" 4,800½ " " " " 18 pr. hundred.....	864	
		2,808
Charges for 800 baskets, at f. 2.60.....	2,080	
For transportation to Havre, at f. 16 pr. 100 bottles.....	1,536	
" charges until on board " " 3 pr. 100 bottles.....	288	
		3,904
		fcs. 31,408

"E. & O. E.

"H. PIPER & Co.

"I, the undersigned, J. C. Kunkelmann, partner of the house of H. Piper & Co., of Reims, declare under oath, that the foregoing invoice contains a true and sincere account of the merchandise therein set forth at its true current value in Reims, and of all charges on said merchandise, and that the invoice contains no other discount or rebate except such as actually allowed in commerce.

"Reims, September 9th, 1853.

70 "J. C. KUNKELMANN."

"I, Jas. C. Kunkelmann, partner of the firm of H. Piper & Co., being duly sworn, do depose and say, that the wine specified in the precedent invoice was purchased separate from the bottles containing the same, for the express purpose of being exported to the United States, and that the bottles containing the same were a distinct and separate purchase, and that the wine was bottled after the said purchase with the intention of shipping the same to the United States.

"Reims, 9 September, 1853.

"J. C. KUNKELMANN."

"Signé et attesté sou foi de serment devans nous, Marie de la ville de Reims.

"Reims, 9 September, 1853.

"GILBERT,
"*Marne Marie Reims.*"

"AMERICAN CONSULATE, HAVRE.

"I, William H. Vesey, consul of the United States of America at Havre, do hereby certify that Mr. Gilbert, who hath signed the declaration to the within invoice, amounting to f. 31,408—thirty-one thousand four hundred and eight francs—is deputy mayor of the city of Reims, department of the Marne, and that he is actually qualified to administer oaths.

71 "Given under my hand and official seal at Havre, this 21st day of September, A. D. 1853, and independence of the United States the 78th.

"Consulate of the United States of America, Reims.

"W. H. VESEY."

And upon the entry of the wine the defendants' testator, Heman J. Redfield, as collector of the port of New York, levied duties at 40 per cent. upon the invoice value including the two items of charges designated therein as

"Transport au Havre"	fcs..	1,536
"Frais jusqu'a bord"	fcs..	288

and also duties on 2½ per cent. commissions on the amount of the invoice.

These exactions were made under Schedule B of the act of July 30th, 1846 (9 Stat. at L., p. 42), and section 1 of the act of March 3d, 1851 (9 Stat. at L., p. 629).

The consignees, Renauld & Francois, at the time of payment were compelled by defendants' testator to subscribe and make the following oath on this and all subsequent entries in this suit, viz:

72 (Endorsed:) Renauld & Francois, per ship Corinthian, Nov. 21st, '53.

Consignee's, importer's, or agent's oath.

DISTRICT AND PORT OF NEW YORK.

I, El. E. Francois, do solemnly and truly swear that the invoice and bill of lading now presented by me to the collector of New York are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the Corinthian, whereof Dyer is master, from Havre, for account of any person whomsoever, for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the goods, wares, and merchandise according to the said invoice and bill of lading; that nothing has been on my part, nor to my knowledge, on the part of any other person concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise, and that if at any time hereafter I discover any errors in the said invoice or in the account now rendered of the said goods, wares, and mer-

chandise, or receive any other invoice of the same, I will imme-
73 diately make the same known to the collector of this district. And I do further solemnly and truly swear that to the best of my knowledge and belief H. Piper & Co. are the owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market value at Reims, of the goods, wares, and merchandise, all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

EML. E. FRANCOIS.

Sworn this 16th November, 1853, before me,

C. P. CLINCH,
Depty. Collector.

Renauld & Francois, at the same time protested against the exaction of duty on said charges, and also on commissions exceeding 2 per cent., as follows:

"To HEMAN J. REDFIELD, Esq.,
Collector on Customs:

"We protest against the payment of duty charged on transport, coastwise, or inland freight charges on merchandise named or contained in the annexed entry, because said goods are invoiced at their true market value without said charges. We also protest against paying duty on the 2½ centum commission added to this entry, believing commission is chargeable at 2 only on the cost or market value of said merchandise. We protest against the excessive duty exacted of us on the merchandise contained in the annexed entry as illegal, and we claim that the goods were
74 exported to the United States from Reims via Havre; that the duty should be laid at the value at Reims; that the transportation or inland freight from Reims to Havre is not a dutiable charge, and the appraiser has not taken the true market value of said merchandise, but has added to the cost of merchandise the coastwise and inland freight, and duty has been exacted on the same. We extend this protest to all future similar transactions, and we hereby reserve our rights to recover back the illegal duties with damages from you and the United States.

"RENAULD & FRANCOIS."

This same course was pursued on subsequent entries till May 15, 1856, when the firm of Renauld, Francois & Co. succeeded Renauld & Francois, and on the first and subsequent entries of wine made after this change the following protest was made against the exaction of duties on those charges, viz:

Protest.

NEW YORK, *May 17th*, 1856.

SIR: The payment of duty on any higher price then that stated in the Invoice and Entry of the wine imported in the Consul, via Havre, in France, from Reims, in France, whence the same was exported to the U. States, and the exaction of duty on the charges of transportation or freight

from Reims, in France, where the exportation to the U. States commenced, to Havre, in France, where the merchandise was laden aboard the vessel in which it was imported into the U. States, is also hereby protested against as unlawful.

75 The grounds of objection to said exactions and of our claims are these:

First. That the invoice, entry, and accompanying papers show the period and place at which this exportation to the U. States commenced, and the full, fair, actual wholesale price of this merchandise in the several chief markets for its sale in the said country whence imported, and at the said period of exportation, and the duty should be taken on that price exclusive of the charges for transportation, inland, overland, or by sea, from one market to another in said country.

Second. That the charges for transportation inland, overland, or by sea from one of the several chief markets for the sale of such merchandise in the country whence exported, to any other of such chief markets, is no part of the shipping charges which by law form with the price of the merchandise, the amount on which duty is to be assessed.

Third. That the exaction of duty on the charges for the transportation of this merchandise operates unfairly and unequally to the prejudice of this importation, and in favor of importations from others of the several chief markets of the country whence exported, in which importations from those others of such markets the charges for transportation are either much less or none at all.

Fourth. That the appraisals of this merchandise have illegally included in the report of value the charges of transportation, which charges, by law, are not matters of appraisal, but merely matters of ascertainment.

76 Fifth. That the appraisals of this merchandise are illegal, because they were not made on the price of the merchandise in the several chief markets for its sale in the country of exportation, but only with reference to the price in one of those markets.

Sixth. That the period and place at which this exportation commenced is shown by the invoice, entry, and accompanying papers, and the period at which the price is to be taken was the period when the merchandise left the place at which the exportation began, and not the time when it left the place at which laden aboard ship, and the appraisals not having found the price at the time and place where the exportation began are illegal.

Seventh. That charges for transportation or freight, whether inland, overland, or by sea, and whether from one country to another, or from one port to another, in the same country, are not dutiable charges, and are not properly shipping charges.

This protest is applied to all future similar importations and exactions, and you and the U. States are held responsible in damages for the same, and the payment of the same is temporarily submitted to, in order to get possession of the goods imported.

Respectfully, your obedient servant,

C. H. RENAULD, FRANCOIS & CO.

To HEMAN J. REDFIELD, Esq.,
Collector of Customs, N. Y.

77 Upon the cause being called for trial in the U. S. circuit court for this district on April 21st, 1864, counsel for the respective parties consented to the following verdict, viz:

THURSDAY, *April* 21*st*, 1864.

The court meets pursuant to adjournment, and is opened by proclamation.

Present: Hon. Judge Hall.

GEO. F. W. BARTELS ET AL. *vs.* HEMAN J. REDFIELD. } Kaufmann, Frank & Wilcoxson. E. D. Smith.

On motion of Mr. Wilcoxson, ordered inquest.

Jurors sworn.

* * * * * * *

By consent of counsel the jury finds a verdict for the plaintiffs in the above-entitled action for excess of duty, with interest thereon, illegally exacted from plaintiffs and paid under the protest to defendant, and not barred by the statute of limitations, on commissions over one and one-half per centum on merchandise imported by the plaintiffs at New York from Great Britain; on commissions over two per centum on merchandise imported by plaintiffs at New York from the continent of Europe, except Paris.

* * * * * * *

78 On charges on merchandise imported at New York for the transportation of the goods from the interior of the country by railroad or water carriage incurred prior to the time of exportation.

* * * * * * *

On transportation charges from the continent of Europe to Great Britain on merchandise imported at New York from the continent of Europe via Great Britain.

* * * * * * *

The amount of excess of duties exacted from the plaintiffs and paid to the defendant, and embraced in the plaintiffs' bill of particulars, to be adjusted by the clerk of the court or his deputy.

* * * * * * *

Subsequently the following order of the court was entered of its own motion by which the order referring the adjustment of the case to the clerk of the court contained in the verdict was revoked, viz:

THURSDAY, *March* 16*th*, 1865.

The court meets pursuant to adjournment, and is opened by proclamation.

Present: Hon. Judge Shipman.

In the matter of the adjustments of suits against the collector of customs.

Ordered, That all the orders heretofore made by this court referring certain suits against the collector of the port of New York to the clerk

79 of this court for adjustment be, and the same are hereby, revoked, except as to such cases the adjustment of which has actually commenced before him.

Subsequently the following order was made by Judge Nelson on July 1st, 1865, by which the adjustment of the verdict in this case was referred to the collector of the port, viz:

SATURDAY, *July 1st*, 1865.

Before the Hon. Samuel Nelson, at Cooperstown.

In the matter of the adjustment of suits against the collector of customs at New York.

Ordered, That all suits in which Kaufmann, Frank & Wilcoxson are attorneys of record for the plaintiffs, references to the clerk in which have been revoked by the order of March 16th, 1865, be, and the same are hereby, referred to the collector of the port for adjustment.

Subsequently the following order was made:

At a term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms in the city of New York on Friday,
80 the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Samuel Blatchford, district judge.

Verdicts April 21st, 1864.

GEO. F. W. BARTELS, ET AL.
vs.
HEMAN J. REDFIELD.
} And other cases.

On motion of E. Delafield Smith, of counsel for the respective parties in the above-entitled causes, Geo. Bliss, esq., U. S. attorney, appearing for the several defendants, it is ordered that the referee therein, in adjusting any of the above cases, shall not exclude from his report any item or items, for the reason that said item or items were paid more than six years before the commencement of suit, unless it shall appear that the statute of limitations were duly pleaded by the defendant in each case, and the referee is instructed to include such items in his reports and statements.

* * * * * * *

81 Subsequently the following order was made:

U. S. circuit court.

GEORGE F. W. BARTELS ET AL.
vs.
HEMAN J. REDFIELD.

On reading and filing the annexed consent of the attorneys for the respective parties, and the certificates of the surrogate of the county of Genesee, annexed to a certain matter entitled C. Gignoux et al. vs. Heman J. Red-

field, and other cases, dated September 11th, 1878, filed in the office of the clerk of this court, and on motion of Marsh, Wilson & Wallis, attorneys for the plaintiffs, it is ordered, that Constance C. Redfield, as executrix, and Frank B. Redfield, as executor, of the last will and testament of Heman J. Redfield, deceased, be and they are hereby, substituted as defendants in the above-entitled action, in place and stead of Heman J. Redfield, deceased. Dated May 22nd, 1880.

SAM'L BLATCHFORD.

Subsequently the following order was made by Judge Blatchford, January 8, 1881, viz:

82 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD, EX., AND Frank B. Redfield, ex'r., &c. } O. S. 1596.

THE SAME
agst.
AUGUSTUS SCHELL. } O. S. 1623.

Upon reading and filing plaintiffs' affidavit and notice of motion herein, dated June 28th, 1880, and upon the papers and proceedings in the above-entitled causes, on motion of Messrs. Marsh, Wilson & Wallis, attorneys for plaintiffs, Stewart L. Woodford, esq., U. S. attorney, appearing for the defendants, in opposition thereto, it is ordered that plaintiffs have leave to amend the summons and declaration in the first above-entitled action by increasing the damages therein set forth to twenty thousand dollars and interest from the dates of payment; and, in the second above-entitled action, by increasing the damages in the summons and declaration set forth to thirty-five hundred dollars and interest from the dates of payment.

Dated January 8th, 1881.

SAM'L BLATCHFORD.

83 The collector of the port not having adjusted the verdict herein pursuant to the above order of July 1, 1865, on motion of the plaintiffs' counsel the court, on June 30th, 1882, made the following order, referring the adjustment of the verdict in this case to Joseph M. Deuel, esq., the clerk of this court:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'RS, &C. } O. S. 1596, and one other action.

84 On reading and filing the annexed affidavit of A. W. Griswold with the papers and notice of motion, and after hearing A. W. Griswold in favor of said motion, and Howard, for Stewart L. Wood-

ford, U. S. attorney, in opposition thereto, and due deliberation had, it is ordered that the above-entitled actions be, and they are hereby, referred to Joseph M. Deuel, clerk of this court, as referee, for the adjustment, according to this verdict, of the plaintiffs' claim upon the bill of particulars served in each case, and his compensation, if not agreed upon between the parties, shall be fixed at such sum as the court shall deem reasonable.

W. J. WALLACE.

New York, June 30th, 1882.

It further appeared that on September 19, 1882, upon an affidavit of Thomas Greenwood, esq., the following order to show cause was made herein by Judge Wallace, viz:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD AS EX'R AL., &C. } O. S. 1596.

On the annexed affidavit let the plaintiffs in the above-entitled action show cause before me at the U. S. circuit court-rooms in the post-
85 office building in the city of New York on third day of October, 1882, at 11 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, why the verdict in this action should not be vacated, and why the defendant should not be allowed to amend his plea by setting up as additional defences therein the pendency of another suit for the same cause or causes of action, res adjudicata, and payment; and why such other and further relief should not be granted as to the court may seem meet and just.

And until the hearing and determination of this order to show cause let all proceedings on the part of the plaintiffs be stayed.

And it is further ordered that a copy of this order and the above-mentioned affidavit be served upon the plaintiffs' attorney at least eight days before the return of this order.

Dated September 19, 1882.

WM. J. WALLACE.

On October 20th, 1882, Judge Wallace modified his order of September 19th, 1882, by the following order, viz:

U. S. circuit court, south. district of New York.

GEO. F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD, ET AL. } O. S. 1596.

86 SAME
vs.
AUGUSTUS SCHELL. } O. S. 1623.

On motion of Marsh, Wilson & Wallis, atty. for the plaintiffs, Stewart L. Woodford, esq., appearing for the defendants, it is ordered that the orders heretofore made in these cases on September 19th, 1882, be modi-

fied by expunging therefrom the "stay of all proceedings on the part of the plaintiffs," who are at liberty to go on with the references, but no final reports to be made by the referee until the further order of this court.

WM. J. WALLACE.

And after hearing argument on the above order to show cause, Judge Wallace, on November 11th, 1882, made the following order, viz:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EXRS., &C. } Nov. 11th, 1882. O. S. 1596.

On reading and filing the defendant's notice of motion and order
87 to show cause dated September 19th, 1882, and after hearing Stewart L. Woodford, esq., U. S. attorney, by Thomas Greenwood, esq., and E. M. Morse, esq., in favor of said motion, and A. W. Griswold, esq., representing Messrs. Marsh, Wilson & Wallis, attorneys for plaintiffs, in opposition thereto, and due deliberation had, it is ordered that said motion for leave to plead res adjudicata be, and the same is hereby, denied, and the stay of proceedings heretofore granted be vacated.

WM. J. WALLACE.

The adjustment of the case coming on before the said Deuel as referee on Nov. 2nd, 1882, the plaintiffs offered in evidence their invoices, entries, and protests embraced in their bill of particulars.

The defendants' counsel objected to the admission in evidence of the entries, invoices, and protest, on the ground that each of the protests is insufficient to entitle the plaintiffs to recover any part of the duties claimed by them.

The defendant's counsel also objected to the admission in evidence of the affidavits on the entries, on the ground that said affidavits are ex parte and taken without notice to the defendants before the commencement of suit, and not in this suit, and are only competent to show that the plaintiffs complied with the law requiring the making of the same.

The defendant's counsel further objected to the admission in evi-
88 dence of the entries made by Renauld & Francois on the ground, first, that they are not entries of goods imported by the plaintiffs and on which plaintiffs paid duties; second, that Mr. Bartels, one of the plaintiffs, did not appear as partner in the firm of Renauld & Francois.

Mr. William P. Amy was thereupon called as a witness for the plaintiffs, who testified that he was formerly in their employ and produced certain of their books and papers tending to show Mr. Bartels relation to the firm of Renauld & Francois prior to May 15th, 1866, from which the referee made certain findings and a decision, which hereafter appear, overruling defendants' objections, to which ruling the defendants' counsel duly excepted, which exceptions were duly noted and allowed. These papers were then admitted in evidence.

Plaintiffs then called John V. Williams, a custom-house clerk, who made a computation of the excess of duty paid on the entries embraced in

plaintiffs' bill of particulars upon the two before-mentioned items of charges designated in the invoices as "Transport au Havre," and "Frais jusqu 'a bord" and on commissions over 2 00 who testified that he understood the phrase "Transport au Havre" to mean transportation or carriage to Havre, and "Frais jusqu 'a bord," to mean expenses, to include putting on board ship at Havre. That the amount of principal of such overpayments was $18,577.85, and that the interest thereon to April 21st, 1864, the date of the verdict, was $12,046.96, making in the
89 aggregate $30,624.81. In this computation Nathaniel George, another custom-house clerk, concurred. In reply to defendants' question, "Is the item 'Frais jusqu 'a bord' shipping charges or charges for putting on board?" he answered, "Expenses incidental to the shipping of the goods at Havre." But defendants' counsel objected to the allowance of a refund of duty paid on the item designated on the invoices as "Frais jusqu 'a bord," claiming it was a dutiable charge. And also objected to the computation of interest on the several payments with the rest at the date of verdict, viz: April 21st, 1864, claiming that interest should be computed from the time of payment to the date of the referee's report.

Pending the decision of the referee on these two points, plaintiffs called H. L. Charles Renauld, who testified that he was a son of P. A. H. Renauld, one of the plaintiffs; that he formerly resided in France, both in Paris and in Normandy; had often been in Reims, and to a certain extent was familiar with the wine business there; that his acquaintance with France and Reims and the wine business extended back many years; that his acquaintance or remembrance as to the principal markets of France for champagne goes back as far as 1853, and that by principal market he means the market where the wine was produced and where it was first sold; that from 1853 to 1861 Reims was the principal market in France for champagne wine; Epernay also in a much smaller way, situated half or three-quarters of an hour's ride from Reims; that Reims is about
90 seven hours by rail from Havre; that Havre was not a wine market in the sense he has mentioned; that a wine merchant would not go to Havre to buy wine; that it was a sea-port, a place where a great many goods were shipped.

Witness said he had been familiar with the business of the firm of Renauld & Francois and Renauld, Francois & Co. a great many years. He was then asked if he understood the above invoice by the "Corinthian," of Nov. 21st, 1853, to which he answered, "I believe I do."

Q. Will you explain to the referee the two items of charges mentioned in the invoice consisting of "Transport au Havre" and "Frais jusqu 'a bord"?

A. "Transport au Havre" means transportation to Havre, as I understand it perfectly, "Frais jusqu 'a bord"—expenses until on board, meaning cartage to Havre. Ships were not as numerous as they are now, and the goods may have had to be stored. I do not intend to be construed as meaning that this item included storage. Expenses until on board means cartage—possibly expenses of loading—commission of the commission merchant who took charge of the goods in Havre.

On cross-examination he was asked:

Q. Are those two places, Reims and Epernay, the only places in France in which large quantities of champagne wines are bought and sold?

A. Those two places and the surrounding country, small places around in the Reims district. Reims is the center of the wine-producing district.

Q. Do I understand you, then, that champagne wine is not bought
91 and sold in large quantities in any town or city of France, except in this district you have mentioned?

A. The only place where it can be bought in large quantities from first hands.

* * * * * * *

Q. You have testified to some extent regarding the item in the invoice per "Corinthian," Nov. 21st, 1853, viz.: "Frais jusqu 'a bord" 288 francs. Do you know what the charge of 288 francs on that invoice was for?

A. Yes, sir; at least from my subsequent experience in business I know what that charge must have been for. It is for charges in Havre, such as cartage, commissions to the commission merchant who took charge of the goods and saw to their being properly put on board.

Q. Was any of it for the storage of the goods at Havre while awaiting shipment?

A. It might be in some cases, but I fancy not in this case, as the amount is so small.

Q. Was any part of it for dockage or dock charge?

A. It might be as a matter of circumstance. I could not tell from the inspection of the invoice. It is the usual charge that is made here.

Q. Was any part of it for town or city dues?

A. I cannot say I know, but I fancy not; as it was in transit, I may say no.

Q. Was any part of it for export duty?

A. I think there was no export duty at that time.

Q. Was any part of it for lighterage?

A. I fancy not.

Q. Was any part of it for handling in Havre?

A. I could not say.

92 Q. Was any part of it for putting the goods on ship at Havre?

A. I could not say.

Q. Was any part of it for any expense connected with its shipment at Havre other than what you have mentioned?

A. I think I covered it by cartage, commission to commission merchant, and incidental matters.

Q. Then you have no way of ascertaining how many distinct items make up this charge of 288 francs, have you?

A. I could not itemize it.

Q. Are 288 francs, or any part of them, charges that accrued at Reims?

A. No, sir.

Q. Are you positive that all of this 288 francs are charges that accrued at Havre, after the goods reached Havre, and before the ship set sail for New York?

A. Yes, sir.

Q. Was any part of 288 francs for port charges at Havre?

A. I could not say.

Redirect examination:

Q. Who paid those charges?

A. The consignees paid them; but for convenience' sake, we had our friends on the other side settle them for us, to save opening an account at Havre. I mean the 288 francs and the transportation, 1536 francs.

Plaintiffs' counsel then offered in evidence pages 22 and 23 of General Regulations No. 63 being an abstract of decisions on questions submitted to the Treasury Department arising under the laws affecting revenue and commerce, issued by the Treasury Department, February 1st, 1856, and also additional instructions dated May 21st, 1863.

93 The defendants, by their counsel, objected to the admission of each or either of the same in evidence, on the ground that it was immaterial, irrelevant, and at most was merely an opinion of what the law meant.

The referee overruled this objection, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The referee then received the same in evidence for what it was worth. Copies of which are as follows:

Extract from "General Regulations No. 63," dated February 1st, 1856 (pages 22 and 23).

Freight or transportation from the foreign port of shipment to the port of importation is not a dutiable charge. In cases, therefore, of goods arriving in the United States after having been first transported from the place of their production or manufacture to another port or place, whether in the same or another country, by land or by water, and thence transhipped for the United States, provided satisfactory evidence be adduced to the collector of the customs at the port where the said goods shall arrive, that they were originally shipped with the bona-fide intention of having them transported to a port in the United States, as their final port of destination—no dutiable costs or charges will have accrued, either on the transportation from the first to the intermediate port, or while remaining in or leaving the latter, the voyage or transportation being regarded as continuous from the country whence originally exported in good faith, on a declared des-

94 tination for a port and parties in the United States.

In illustration of the rule thus established it may be remarked that the evidence of final destination being satisfactory, no duties would be chargeable in the ports of the United States on the freight or transportation or charges in the intermediate ports on goods originally from China or Glasgow or Cardiff or Londonderry to Liverpool, from Malaga to Valparaiso, from Dresden to Bremen, or from Basle to Havre on the said goods being trans'hipped for the United States from the several intermediate ports enumerated.

ADDITIONAL INSTRUCTIONS.

TREASURY DEPARTMENT,
May 21*st*, 1863.

Collectors and others are informed that this Department concurs in the decision of the courts that charges for transportation of goods from the interior of the country, by railroad or water-carriage incurred prior to

the time of exportation, cannot be added to the value of the goods, for the purpose of establishing their dutiable value.

All costs and charges incidenta l to the shipment, such as port charges, drayage, commissions, export duty, &c., &c. (except marine insurance), should be added to the value of any goods, wares, or merchandise in the principal markets to fix their dutiable value.

The usual or legal rate of commissions on merchandise from Great Britain has been decided in the United States circuit court at New
95 York (Bredt et al., vs. Schell, collector), to be one and one-half per centum, and that of commissions on merchandise from Continental Europe, except Paris (see same case), to be two per cent.

In this decision the Department also concurs.

S. P. CHASE,
Secretary of the Treasury.

Counsel for defendants offered in evidence a judgment roll in the case of Peter A. H. Renauld, E. E. Francois, and Geo. F. W. Bartels vs. H. J. Redfield, filed in the clerk's office of the United States circuit court for the southern district of New York on the 17th day of February, A. D. 1864, together with a satisfaction piece filed on the 7th day of April, 1864.

Plaintiffs' counsel objected to the admission in evidence of the above papers on the ground that they are wholly immaterial and irrelevant, being judgment and satisfaction piece of a date prior to the verdict rendered in this case, and if they ever could have had any relevancy to this case it could only be by pleading it as a defence; that it was too late, after a verdict entered by consent, as was the verdict in this case, April 21st, 1864.

The referee sustained plaintiffs' objections. To which ruling the defendants' counsel excepted, which exception was duly noted and allowed.

Copies of this judgment roll and satisfaction piece are hereto annexed, marked Defendants' Exhibits Nos. 11 and 12, for identification, April 1st, 1885. J. M. D.

96 It was then stipulated and agreed by and between the counsel for the respective parties that the objection made and exception taken by the defendant's counsel to the item "Frais jusqu' a bord," in the case of the importation by the Corinthian of November 21st, 1853, shall be considered to have been made to each and every importation included in this suit, wherever such item may appear, with the same force and effect as if each of similar importations were offered separately and separate objections and exceptions were made upon the record by the defendants' counsel to such item, with any request to find by either party as to such item, shall apply with as much force and effect to each and every entry and invoice containing said item as if such entries and invoices had been offered subsequently and objections made and exceptions taken to each at the time of being offered, and that any request of either party to find as regards such item on the entry and invoice per the Corinthian, or refusal so to find and exceptions taken thereto, shall be deemed to apply to each and every other entry as if specifically made concerning the same.

Plaintiffs' and defendants' counsel then respectively presented to the

referee requests to find as matters of fact and conclusions of law, to which he affixed his answers: "Allowed," "Allowed as modified," or "Not allowed," or "Not allowed as stated."

The following are plaintiffs' requests:

97 GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'R, &C.

Plaintiffs request the referee to find, as matters of fact:

As to the question of copartnership:

1st. That the books of Renauld & Francois and Renauld, Francois & Co. show that G. F. W. Bartels came into the employ of Renauld & Francois about Nov., 1850, as a clerk at an annual salary.

That he continued in that capacity till January 1st, 1852.

Allowed.

2nd. That from January 1st, 1852, his name disappears from the books as a clerk, and thereafter he is not credited with any salary whatever, but his account is kept in the same way as the accounts of Mr. Renauld and Mr. Francois, the other partners. He is debited as they are with all sums drawn out of the business during the year, and these sums are balanced by credits to transfer account.

Allowed.

3d. That this transfer account, which showed the interest and capital of the respective partners, was kept in a private book by one of the members of the firm and did not appear in the general books of the firm till January 1st, 1856.

Allowed.

98 4th. That on that date the interest and capital of the partner Mr. Renauld appears to be $54,880.12, and of Mr. Francors it appears to be $73,604.22, and of Mr. Bartels it appears to be $15,359.22.

Allowed.

5th. The books further show that Mr. Bartels' share in the business from January 1st, 1856, to June 30th, 1856, was ten per cent., and amounted to $3,427.39, and that his accumulated capital in the firm on July 1st, 1856, was $18,786.61.

Allowed.

6th. That Mr. Bartels became an ostensible partner May 15th, 1856, when the style of the firm was changed to Renauld, Francois & Co.

Allowed.

7th. That no balance-sheet was then made or balances struck or account of stock taken on any account of Renauld & Francois in liquidation or anything showing any liquidations of the business of Renauld & Francois made; but the notes and acceptances of Renauld & Francois were paid by Renauld, Francois & Co., and the bills receivable of Renauld & Francois were collected by Renauld, Francois & Co.

Allowed.

8th. That Mr. Bartels' interest in the firm continued from July 1st, 1856, to July 1st, 1872, and was twenty-five per cent.

Allowed.

99 9th. That the above facts show, as matter of law, that said Bartels had an interest in the excess of duties paid on all importations embraced in plaintiffs' bill of particulars, on which duties were paid between November 1st, 1853, and July 1st, 1857.

Allowed.

A. W. GRISWOLD,
Of counsel for Plaintiffs.

Plaintiffs further requested the referee to find as matters of fact—

1st. That the defendant, upon a subpœna duces tecum served upon the collector of customs, produced from the files of the custom-house the invoices and entries made by the plaintiffs and specified in their bill of particulars, which entries were offered and received in evidence.

Allowed.

2nd. That upon certain of those entries, viz, the entries per Corinthian, dated Nov. 21, 1853, and upon the entry per Zurich, dated Jan. 19th, 1854, and upon the warehouse entry per Zurich, dated June 13th, 1854, as well as upon many other of plaintiffs' entries so produced, protests against the payment of duties on charges and commissions are made and signed by the plaintiffs.

Allowed.

3rd. That such protests were made at or before the payment of the duties on said entries.

Allowed.

100 4th. That said protests are legal and valid protests with a prospective clause sufficient in law to entitle the plaintiffs to recover excess of duty paid on the entries on which they are made and also upon subsequent entries made to the same collector.

Allowed.

Plaintiffs' counsel further requests the referee to find as matters of fact —

5th. That it appears from the evidence that Reims was the central and principal market of the champagne wine-growing district of France, and the principal market of France for the sale and export of such wines.

Allowed.

6th. That the champagne wines embraced in plaintiffs' bill of particulars were exported from Reims, in France, to New York, via Havre, consigned to the plaintiffs.

Allowed.

7th. That the true cost or market value of the wines on which duties should be assessed was the value delivered at Reims, which value was made up from the value of the wine at Reims, the cost of the bottles which contained it, and the cost of the cases or baskets in which it was packed, and the packing and delivery at Reims.

Not allowed as stated.

8th. That all expenses on said wines after its departure from Reims, incurred for transportation to and receiving and putting on board ship in Havre, were for account of and paid by the plaintiffs. But for their

101 convenience the consignors advanced the amount of such disbursements and charged up the items to the plaintiffs in the invoice of each shipment.

Allowed.

9th. That the items specified in plaintiffs' invoices as "transport au Havre," and "frais jusqu 'a bord," mean expenses incurred in transporting the wine from Reims to the ship in Havre, and that such charges are not dutiable under the verdict herein, which provides that plaintiffs recover "on charges on merchandise imported at New York, for the transportation of the goods from the interior of the country, by railroad or water carriage, incurred prior to the time of exportation."

Allowed.

10th. That the plaintiffs are entitled, under their verdict, to the sum of $30,624.81, as of April 21st, 1864, the date thereof.

Allowed.

ALMON W. GRISWOLD,
Of Counsel for Plaintiffs.

The defendants' counsel presented to the referee the following requests to find:

U. S. circuit court, southern district of New York.

102 G. F. W. BARTELS, P. A. H. RENAULD, and E. E. Francois, *vs.* CONSTANCE C. REDFIELD, AS EXECUTRIX, ET AL., &c. } O. S. 1596.

DEFENDANTS' REQUESTS TO FIND.

The defendants in the above-entitled action request the referee to find as follows:

As conclusions of fact.

I. That the above-named plaintiffs, P. A. H. Renauld and E. E. Francois, during the years 1850 and 1851, were co-partners in trade, doing business under the firm name of Renauld & Francois.

Allowed.

II. That during said years the plaintiff, G. F. W. Bartels, was employed as a clerk by the said firm of Renauld & Francois.

Allowed as modified.

III. That during such years, as such clerk, the said G. F. W. Bartels received from the said firm of Renauld & Francois a yearly salary.

Allowed as modified.

III. That thereafter, and from about Jan. 1st, 1852, up to about Jan. 1, 1856, the said G. F. W. Bartels continued with said firm of Renauld & Francois.

Allowed as modified.

103 IV. That during said last-mentioned time the said G. F. W. Bartels received no salary from said firm of Renauld & Francois, but, in lieu thereof, he was compensated by said firm out of the net profits arising from the business done by said firm.

Not allowed.

V. That on or about May 15th, 1856, the said firm of Renauld & Francois ceased to exist.

VI. That on or about the said last-mentioned date the firm of Renauld, Francois & Co. was duly formed.

Allowed as modified.

VII. That said firm of Renauld, Francois & Co. consisted of P. A. Renauld, E. E. Francois, and G. F. W. Bartels, the above-named plaintiffs.

Allowed.

VIII. That the firm of Renauld & Francois made certain importations from France into the U. S. by the following-named vessels: Corinthian, Nov. 21, 1853; St. Nicholas, May 14, '56; C de la Mer Noire, M'ch 29, '53; and others specified in this request between Nov. 21st, 1853, and May 5th, 1856.

Allowed.

IX. That after said May 15th, 1856, the firm of Renauld, Francois & Co. made the other importations referred to in the plaintiffs' statement and bill of particulars herein.

Allowed.

104 IX ½. The firm of Renauld & Francois imported certain champagne wines from France into the United States, November 21, 1853, by the Corinthian.

Allowed.

X. That said champagne wines were the product of Reims, France.

Allowed.

XI. That said champagne wines were invoiced at said Reims to said firm of Renauld & Francois by and for the account of H. Piper & Co., of said Reims, to be placed by shipping merchants at Havre on board a ship at Havre bound for the U. S.

Not allowed as stated.

XII. That the invoice thereof is in French, and, besides other items, sets forth the following:

Trasport au Havre	1,536
Frais jusqu 'a bord	288

Allowed.

XIII. That the item "Transport au Havre" means in this connection cost of transportation from Reims to the railway station in Havre; and the amount thereof with commissions thereon is equivalent in American money to about $293.

Allowed.

XIV. That the item "Frais jusqu 'a bord" means literally, "expenses until on board," and amounts to $55.

Allowed.

105 XV. That the last-mentioned expenses were expenses incurred in Havre after the arrival of said champagne wines at the railway station in Havre and up to and including or about the time said champagne wines were put on ship-board at Havre, such as cartage, loading, commissions of the merchants in Havre who had charge of the said wines while in Havre.

Not allowed as stated.

As conclusions of law.

I. That no partnership existed between said P. A. Renauld, E. E. Francois, and G. F. W. Bartels, the plaintiffs herein, prior to May 15, '56.

Not allowed.

II. That said plaintiffs are not entitled to recover in this action in the case of any importation made by said Renauld & Francois and specified in the VIII of defendants' request' to find as conclusions of fact herein.

Not allowed.

III. That the period of exportation of said champagne wines was the time when the ship by which the same were brought to the United States set sail therefor.

Not allowed.

IV. That the point or place in France at which the exportation of said champagne wines commenced was Havre.

Not allowed.

V. That said item of frais jusqu 'a bord means expenses or charges incurred in Havre in and about the shipment of the said champagne wines upon the ship or vessel that brought them to the United States.

Not allowed.

106 VI. That said item of "frais jusqu 'a bord" is a dutiable charge.

Not allowed.

VII. That said plaintiffs are not entitled to recover the duty, or any part thereof, paid on said item of "frais jusqu 'a bord."

Not allowed.

VIII. That the plaintiffs are entitled to recover interest upon the items of excess of duty paid by them and recoverable in this action, from several dates of payment thereof, until this day of , 1882, the date of the referee's report herein.

Not allowed as stated.

Dated New York, December , 1882.

Respectfully submitted.

S. L. WOODFORD,
U. S. Att'y, and Att'y for Def't.

To JOSEPH M. DEUEL, Esq., *Referee.*

The foregoing requests, so far as they are consistent with the findings stated in my report, are allowed, and those inconsistent are disallowed.

J. M. DEUEL, *Referee.*

The referee on Dec. 15th, 1882, made and filed his report as follows, viz:

107 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'RS, &c.

Under an order of the court made and entered herein June 30th, 1882, this cause was referred to me to adjust the amount due to the plaintiffs,

under the verdict obtained April 21, 1864, for excess of duties exacted on charges and commissions above the legal rate upon importations by the plaintiffs.

The plaintiffs have been represented before me by Mr. A. W. Griswold and the defendants by Messrs. E. M. Morse and Thomas Greenwood.

All the evidence offered has been taken and duly considered, and I find therefrom as matters of fact as follows:

First. That during the years 1850 and 1851 P. A. H. Renauld and E. E. Francois were partners in business in the city of New York, trading under the name and style of Renauld & Francois, and that from about November, 1850, to and including December 31, 1851, the plaintiff, George F. W. Bartels was in their employ at a stated salary, the same being credited to him on the books of the firm.

108 Second. That after December 31, 1851, said Bartels continued with said firm without being credited on said firm's books with any sum or salary; that his accounts thereafter were kept in the same way as were the accounts of the other plaintiffs, and different than the accounts of the employees, to wit, he was charged with all amounts drawn out and this was balanced by credits to "transfer account," which said transfer account was kept in a private book by one of the partners and does not appear on the general books of account of said firm until January 1st, 1856.

Third. That on January 1st, 1856, a capital account was opened by said firm with each partner, wherein said Bartels appears to be credited with the sum of $15,359.22, and on June 30th, 1856, was further credited with the sum of $3,437.29, being "10 per cent. of this one-half year's net profit."

Fourth. That on May, 1856, the firm name was changed to Renauld, Francois & Co., the partners being the plaintiffs herein. No written transfer seems to have been made, nor were the books balanced; the accounts of the new firm were continued in the old books. The bills receivable of the prior firm were collected by the new firm, and the bills payable of the prior firm were assumed and paid by the new firm. That said firm of Renauld, Francois & Co. continued as originally constituted until July, 1872, and that Bartels' interest therein subsequent to July 1st, 1856, was 25%.

109 Fifth. That the firm of Renauld & Francois and Renauld, Francois & Co. made the importations referred to and embraced in the bill of particulars and statement in this case from Reims to France and duly protested against the payment of duties on the matters referred to in this suit.

Sixth. That said importations, consisting of champagne wines, invoiced from Reims, the principal market for champagne in France, to the plaintiffs, and that many of said invoices containing the following items: "Transport au Havre," "Frais jusqu 'a bord," meaning, respectively, transportation charges from Reims to Havre, Reims being an inland and Havre a seaport town, and other and additional charges and expenses incurred in Havre in trans'hipping such goods, wares, and merchandise from the railroad in Havre to and putting on board vessels there bound for New York; each of said items being expenses incurred while such merchandise was in transitu.

Upon the foregoing facts I find as conclusions of law:

That George F. W. Bartels, P. A. H. Renauld, and E. E. Francois were each interested in the importations made under the name of Renauld & Francois and Renauld, Francois & Co., and also in the amount of duties illegally exacted by Heman J. Redfield, at that time collector of the
110 port of New York, and that they are therefore entitled to recover of the defendants, as executrix and executor of said Redfield, as shown by the statement giving the items in detail, the sum of eighteen thousand five hundred seventy-seven and $\frac{85}{100}$ dollars ($18,577.85) as principal, together with interest on the various items up to April 21, 1864, amounting to twelve thousand forty-six and $\frac{96}{100}$ dollars, ($12,046.96), making in the aggregate as due at the date of said verdict the sum of thirty thousand six hundred twenty-four and $\frac{81}{100}$ dollars ($30,624.81).

All of which is respectfully submitted.

N. Y., Dec. 14, 1882.

J. M. DEUEL, *Referee.*

Plaintiffs therefore gave notice of filing said report as follows:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EX'RS, &C. } O. S. 1596.

SIR: Please take notice that the report of the referee in the above-entitled action has this day been filed in the office of the clerk of this court, by which report there is due plaintiffs, under the verdict herein, principal, $18,577.85, and interest to April 21, '64, date of verdict, $12,046.96; amount of verdict, $30,624.81.

Dated Dec. 15, 1882.

111 Yours,

MARSH, WILSON & WALLIS,
Plff's Att'ys.

Per A. W. GRISWOLD,
of Counsel.

To STEWART L. WOODFORD,
U. S. Attorney, for Def'ts.

And afterwards, to wit, on December 18th, 1882, defendants' counsel duly filed the following exceptions to the referee's report:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD, EX'R, ET AL. } O. S. 1596.

Defendants' exceptions to referee's decisions.

The defendants in the above-entitled action hereby excepts:

I. To the report of the referee filed therein December 15th, 1882, and to each and every part of the same.

II. To the second finding of fact made therein by said referee December 14th, 1882.

III. To the third finding of fact made therein by said referee December 14th, 1882.

IV. To the fourth finding of fact made therein by said referee December 14th, 1882.

V. To the fifth finding of fact made by said referee December 14th, 1882.

112 VI. To the sixth finding of fact made therein by said referee December 14th, 1882.

VII. To the conclusions of law found therein by said referee December 14, 1882, and to each and every part thereof.

VIII. To the finding of said referee, as requested by the plaintiffs in their 6th, 9th, and 10th requests to find; and in their 1st, 2nd, 3d, 4th, 5th, 7th, and 9th requests to find as to question of co-partnership.

IX. To the finding of said referee upon or of any part or in any way of the 7th plaintiffs' requests to find; said requests to find being marked by said referee, "Not allowed as stated."

X. To the refusal of said referee to find as requested by the defendants in their requests II, III, IV, V, VI, VII, XI, and XV, to find as conclusions of fact, and to his finding of each and every of such requests as were modified by him, and, as so modified, were found by him.

XI. To the refusal of said referee to find as requested by the defendants in their requests I, II, III, IV, V, VI, VII, and VIII to find as conclusions of law.

Dated New York, Dec. 18th, 1882.

STEWART L. WOODFORD,
U. A. Att'y and Att'y for Def't.

And afterwards, on December 19th, 1882, the plaintiffs' counsel
113 gave notice of a motion to overrule defendants' exceptions, and on March 28th, 1883, said motion was argued before the honorable William J. Wallace, circuit judge of this court, to overrule the aforesaid exceptions of the defendants and confirm the said referee's report and for judgment on the verdict for the amount found due plaintiffs therein with interest, and for such and further relief as to the court should seem just.

And the plaintiffs by their counsel were heard in behalf of said motion, and the defendants by their counsel in opposition thereto.

And afterwards, to wit, on the 4th day of April, 1883, the said circuit judge made his decision upon said motion sustaining the defendants' exceptions to the finding of the referee that the plaintiffs were entitled to recover duties exacted on the aforesaid charges of "frais jusqu'a bord," and their exceptions as to allowance of interest, computed with a rest at the date of the verdict in this cause as a part of their damages, and overruled defendants' other exceptions and at the same time made and filed an opinion in the office of the clerk of this court, of which the following is a copy:

Circuit court of the United States for the southern district of New York.

BARTELS
vs.
REDFIELD.

114 WALLACE, J.:

In 1864 a verdict was rendered in this case and a number of other cases involving the same questions, upon the consent of counsel, in open court.

The suits were brought to recover duties alleged to have been illegally exacted by the defendant as collector of the port of New York upon merchandise imported by the plaintiffs.

The duties were levied under section 1 of the act of Congress of March 3, 1851, directing the collector to levy duty upon the actual market value or wholesale price of merchandise at the period of exportation to the United States in the principal markets of the country from which the same is imported, and upon "all costs and charges, except insurance, and including in every case a charge for commissions at the usual rates."

The verdict was "for the plaintiffs for excess of duty with interest thereon illegally exacted from plaintiff, and paid under protest to defendant, and not barred by the statute of limitations." It further stated in general terms upon what charges and commissions the duties exacted might be recovered, among others as follows: "On charges on merchandise imported at New York for the transportation of the goods from the interior of the country by railroad or water-carriage incurred prior to the time of importation."

A reference was subsequently ordered to a referee to ascertain and report the amount due to the plaintiffs in the several cases.

115 The exceptions to the referee's report present various questions which are not open to consideration. Certainly the verdict rendered in 1864 upon the consent of counsel must be as conclusive upon the matters covered by it as a stipulation formally made and acquiesced in for nearly twenty years. That verdict precludes the defendant from denying that the plaintiffs are entitled to recover excess of duties illegally exacted by and paid under protest to the defendant. When the plaintiffs show that they have paid excessive duties under protest to the defendant, by the terms of the verdict they are entitled to recover the same.

The defendant cannot, therefore, avail himself of a defense which proceeds upon the theory that plaintiffs never had a cause of action for the recovery of such duties. The defense of a former suit in bar is of that character.

The defense of the statute of limitations was reserved to the defendant by the terms of the verdict, but when the case was before Judge Blatchford on defendant's motion to be allowed to plead the statute of limitations, he denied leave. This was doubtless upon the theory that the right to interpose that defense only applied to those cases in which it has been pleaded. The verdict was rendered in a large number of cases and is so indefinite in many of its clauses that Judge Nelson in 1868, in Winslow vs. Maxwell, and Judge Benedict, in 1869, in Greenleaf vs. Schell, treated it as a stipulation open not only to construction but to modification.

116 The order of Judge Blatchford precludes the defendant from availing himself of the statute of limitations.

The defendant insists that the referee improperly allowed the sums paid for duty upon the charges on the merchandise at Havre after its arrival there.

The evidence show' that those charges were for cartage and commissions to the merchant who received the merchandise for the plaintiffs and put it on board ship for exportation. They were not charges for inland transportation from one principal market to another, and, therefore, were not specified in the protest of the plaintiffs. Construing the verdict with the

aid of the protests, it seems clear that it was never intended to authorize the recovery of duties paid for such charges, and that this is the true construction is the more clear because the recovery intended to be authorized by the verdict was for duties which the courts have held were not legally collectible and which the Treasury Department had conceded to have been illegally exacted. This is a part of the history of these cases in this court. It had been decided that charges for freight or transportation of merchandise from the interior markets of the country to the port of exportation were not dutiable. (Gibbs vs. Washington, McAllister, 430.)

It had also been decided that charges for freight or transportation from the place of shipment to the port of importation were not dutiable. The Treasury Department had acquiesced in these decisions. It had
117 never been decided that charges for loading the merchandise on shipboard at the port of exportation or that the commissions of those who took charge of the merchandise at such port were not legitimate charges and commissions upon which duty was leviable. In the Treasury circular of May 21st, 1863, it is announced that just such charges and expenses as are here contested should be added to the value of the goods in levying duty. That regulation was in force and the recognized rule of the Department when this suit was brought and when the verdict upon consent was entered. It can not be supposed the Government meant to abandon its construction without a contest, and the language of the verdict does not require such an interpretation.

The sums paid for duties levied upon these charges and commissions should be disallowed in the recovery. If the protest had contemplated contesting any part of these charges and commissions, it might be open to enquiry whether any part of them were incidental to the transportation from Reims to Havre.

But there would be no reason for rejecting the addition to the market value of such charges as would have been incurred if Reims had been the port of exportation instead of Havre. As the case stands, however, this enquiry can not be pursued. The verdict is no broader than the terms of the protest.

There is no merit in the point taken by the defendant, that the plaintiffs can not recover for the duties paid during the period when one
118 of them had no interest in the cause of action.

If there had been a plea of misjoiner, quite likely under the terms of this very peculiar verdict it might have availed the defendant.

The verdict did not liquidate the damages recoverable by the plaintiffs, and it was erroneous to make a rest at the date of the verdict in computing the interest which the plaintiffs are entitled to as a part of their damages.

The cause is referred back to the referee to ascertain the sum due the plaintiffs upon the principles thus stated.

Thereupon the plaintiffs, by their counsel, moved before the said circuit judge for a re-argument of the said motion of March 28, 1883, and the re-argument of that motion having been granted, the same was made on March 4th, 1884, before the said circuit judge by the plaintiffs' counsel in behalf thereof, and by the defendant's counsel in opposition thereto.

And afterwards, to wit, on the 16th day of May, 1884, the said circuit

judge rendered his decision affirming his previous decision of April 4th, 1883, and made the following order thereon:

U. S. circuit court, southern district of New York.

119 GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &C. } O. S. 1596.

This cause coming on to be heard on defendants' exceptions to the report of Joseph M. Deuel, esq., to whom the case was referred for adjustment under the verdict taken therein April 21st, 1864, after hearing E. M. Morse, esq., and Thomas Greenwood, esq., of counsel for the defendants, in support of said exceptions, and Luther R. Marsh, esq., and A. W. Griswold, esq., of counsel for the plaintiffs, in opposition thereto; and, again, upon re-argument, after hearing Thomas Greenwood, esq., in support of said exceptions, and William G. Choate, esq., and A. W. Griswold, esq., in opposition thereto, and due deliberation had, it is ordered:

1st. That defendants' exceptions to the allowance by the referee of a refund of duties paid by plaintiffs on the item designated in the invoices as "Frais jusqu 'a bord," and also defendants' exceptions to the allowance by the referee of interest computed with a rest at date of verdict be, and the same are hereby, sustained, and defendants' & other exceptions are hereby overruled;

2d. It is further ordered, that said cause be referred back to the referee for re-adjustment in conformity to the decision of the court, and

120 3d. It is further ordered, that the referee receive such evidence as the parties may present respecting the existence of laches, which may affect the right of plaintiffs to recover interest under the decision of the Supreme Court, in the case of "Redfield vs. Ystalyfera Iron Company."

4th. And it is further ordered, that the defendants have their disbursements incurred for re-argument, the same to be taxed by the clerk of this court.

Dated New York, May 16th, 1884.

WM. J. WALLACE.

To said order and the decision embodied therein, in so far as they overruled the defendants' objections and exceptions, the defendants, by their counsel, excepted, which exception was duly noted and allowed.

And to so much of said order and ruling of the court as decided that the plaintiffs are not entitled to recover the excess of duty paid on said item of charges designated in their invoices "Frais jusqu 'a bord," the plaintiffs, by their counsel, excepted, which exception was duly noted and allowed.

And to so much of said order and ruling of the court as decided that the plaintiffs are not entitled to interest computed with a rest at April 21st, 1884, the date of the verdict, the plaintiffs, by their counsel, also excepted, which exception was duly noted and allowed.

And afterwards this cause came on for re-hearing before the
121 referee, pursuant to said order of May 16, 1884, the plaintiffs being represented by their counsel and the defendants by their counsel.

To maintain the issue on the part of the plaintiffs they produced as a witness in their behalf John V. Williams, who, being duly sworn, testified:

That he was then an entry clerk in the New York custom-house, and had been connected therewith for thirteen years. That he had made a computation and prepared a statement of the amount of duties paid on charges in this case, excluding the item of charges designated in the invoice as "Frais jusqu 'a bord" and including a computation of the duty paid on commissions over two per cent. in the case of importations embraced in the plaintiffs' bill of particulars in this cause; that the amount of duty paid on charges and commissions, excluding the items designated in the invoice "Frais jusqu 'a bord," with interest to May 31, 1884, was as follows:

The princ., excluding "Frais jusqu 'a bord"	$14,394.95
Simple interest:	
7 per cent. int. to December 31, 1879	25,312.78
6 " " " " May 31, 1884	3,812.07
	43,519.80

The plaintiffs, by their counsel, thereupon presented to the referee certain requests to find as conclusions of fact and of law as follows:

U. S. circuit court, so. dist. of N. Y.

122 GEORGE F. W. BARTELS ET AL. *against* CONSTANCE C. REDFIELD ET AL., EX., &C. } O. S. 1569.

Plaintiffs request the referee to find as conclusions of facts:

1st. That the amount of principal of duties over-paid by plaintiffs (excluding duty on the item of charges designated in the invoices as "Frais jusqu 'a bord")	$14,394.95
Simple interest from date of several payments to date of ref. report:	
7 pr ct. int. to Dec. 31, '79	25,312.78
6 " " June 1, 1885	4,678.13
	44,385.86

I so find. J. M. D.

2d. That said amount of principal (excluding duty on "Frais 'a bord")	14,394.95
Interest computed with rest at date of verdict:	
7 pr ct. int. to Ap'l 21, '64, date of verdict	9,469.92
Amount of verdict	23,891.77
7 pr ct. int. on $23,891.77 to Dec. 31, '79	26,250.43
6 pr ct. int. on $23,891.77 to June 1, '85	7,764.57
Total	57,906.77

I so find. J. M. D.

3d. That said amount of principal (including duty on "Frais jusqu 'a bord")	18,642.15
Simple interest from date of payment to date of ref's report:	
7 pr. ct. int. to Dec. 31, '79	32,571.47
	51,213.62
6 pr ct. int. on $18,642.15, to June 1, '85	6,058.39
Total	57,272.01

I so find. J. M. D.

123	4th. That said amount of principal (including duty on "Frais jusqu'a bord")	$18,642.15
	Interest computed with rest at date of verdict:	
	7 pr ct. int. to Apl. 21, '64, date of verdict	12,089.28
	Amt. of verdict	30,731.43
	7 pr ct. int. on $30,731.43 to Dec 31, '79	33,764.53
	6 pr ct. int. on $30,731.43 to June 1st, '85	9,987.17
	Total	74,483.13

I so find. J. M. D.

And as a conclusion of law:

That plaintiffs are entitled to a report and judgment for $74,483.13, principal and interest to June 1st, 1885, and to their costs.

I do not so find. J. M. D.

124 *As to laches.*

Under the 3rd paragraph of the order of reference of May 16th, 1884, directing the referee to receive such evidence as the parties may present respecting the existence of laches which may affect the right of the plaintiffs to recover interest under the decision of the Supreme Court in the case of Redfield vs. The Ystalyfera Iron Co., the testimony of the following witnesses and also documentary evidence was introduced touching the causes of delay in the adjustment of the verdict in this case, viz:

Plaintiffs called John V. Williams, who testified that he was refund clerk in the custom-house from October, 1869, to 1877 or '8; that his duties as such clerk were the preparation of statements for submission to the Treasury Department of refunds authorized by the courts or the Treasury Department, all under the instructions of the auditor of the custom-house.

That the duties of his office required the current work of the office—the adjustment of refunds recently authorized under the Secretary's instructions, in preference to cases of long standing. That it was impossible for him to say what portion of his regular office hours from 1869 to 1877 he was able to devote to the adjustment of old cases of long standing; that sometimes for a month or more he would not have an oppor-
125 tunity to work on any charges and commissions cases. That he remembers that about February, 1871, he received instructions and directions from the auditor relative to work on the adjustment of charges and commissions cases under the directions of Judge Pierrepont as referee.

That his recollection was that what might be called the current work of his desk, as distinguished from the charges and commissions cases, was of such a quantity, the auditor, after showing witness certain correspondence from the Treasury Department requested and authorized him, together with three or four other clerks in the auditor's department to work on these cases in "after hours." That by "after hours" he meant other than "official" hours. That he worked on charges and commissions cases during after hours. That the work that he performed on such cases was done mostly in the office of Edwards Pierrepont, who was referee in some of

these cases. That the auditor authorized him to receive proper remuneration from the plaintiffs' attorneys for his work in connection with these cases.

That A. C. Rose, W. Childs, and Mr. Berry, clerks in the custom-house, were also detailed to work on charges and commissions cases out of office hours. That these persons named by him were not connected with his desk, but were employed in the refund room of the auditor's office. That it was no part of their duties during office hours to work on the adjustment of charges and commissions cases that he knew of, except as they
126 were subject to the auditor's orders. That these persons were employed about duties which were separate and distinct from the duties of his office, and were in a different room from his room. That he could not say that during the time that he was refund clerk that any charges and commissions cases stood referred to the collector, but that he knew a large number of cases had been so referred from time to time. That he could not say what time and opportunity from 1870 to 1877 he had to work on charges and commissions cases, other than those which were referred to Judge Pierrepont and his successor, Mr. Davenport.

That he remembered working on charges and commissions cases which had been referred to the collector of customs as referee; that he did not remember the number of such cases; that there were several; and considering it was part of the work of his desk, he did what he could of them, and that the work of adjusting such cases he found very complicated, and that no one, except those he had mentioned, understood the work, for the reason that they had nothing to do with it. That, with regard to the competency of the ninety or more other clerks who were in the auditor's department, he did not feel at liberty to testify. That according to his recollection those persons whose names he had mentioned were also detailed to work on charges and commissions cases which were referred to the collector during the period that he was refund clerk.

127 The witness on cross-examination testified that during the period that he was refund clerk he worked upon and adjusted charges and commissions cases referred to Mr. Pierrepont and also the collector. That he selected for adjustment such of these cases as he adjusted, guided as a rule by the date of priority of their reference. That the plaintiffs' attorney also did to some extent make such selection. That, as he understood it, the plaintiffs' attorney had a right to select such of these cases for adjustment as they wished to adjust; that their requests, as a rule, would come through the auditor to witness. That he did not recollect anything about such a request being made by the plaintiffs or their attorneys for the adjustment of this case. That for adjusting charges and commissions cases out of office hours he received a remuneration from the plaintiffs' attorneys in the cases he adjusted.

The witness on re-direct examination testified that he was not able to adjust all the charges and commissions cases that were referred to the collector and Mr. Pierrepont and Mr. Davenport during the time that he was refund clerk as fast as they were presented to the referee for adjustment. That even now, seven years after he was promoted from that desk, they had not been adjusted. That there was great delay in making those adjustments and a great deal of clamoring by the plaintiffs during that

time to have their cases adjusted, which witness was unable on ac-
128 count of their number and the labor to adjust. That he did not recollect any particular case about which there was this great delay or clamor made. That during the time he was refund clerk he did not recollect of any one ever urging the adjustment of any one particular case. That both the delay and clamor were general.

The plaintiffs then produced, as a witness in their behalf, John V. Vanarsdale, who, being duly sworn, testified that he was clerk in the custom-house, a searcher of records, and had been there about twenty years; that in obedience to a subpœna duces tecum, served on the collector, he had brought certain books, papers, and documents from the custom-house, which witness then produced; that he was familiar with the records of the custom-house and the mode of communication between the auditor's department thereof and the record room, and the method by which the papers from the record room were brought to the auditor's department. Witness was then asked, "Will you explain the method by which, when papers are wanted by the auditor or collector, such papers are obtained from the record room?"—Ans. A written application is made by the collector or auditor which is then referred to the seventh division of the custom-house and checked there for the record room, and on that check papers are produced; that in the case of invoices and entries in large numbers the application gave the name of the importers, names of the vesssls, and the dates of the arrivals thereof.

129 The application—the list—would be sent up to the record office where the papers were gotten up. The papers would then be sent down to the auditor from the record room, if the list was checked by him, and in the record room there would be kept an account of the papers so sent, and the application therefor would be kept on file by the chief clerk of the record room. That the paper produced by witness was brought by him from the record room of the custom-house. That the initials "S. G. O." thereon stood for "S. G. Ogden," formerly auditor of the custom-house. The words "entries and invoices" are written above "S. G. O., auditor," and that from the auditor that paper was sent to the seventh division, and it bears the initials "I. D. B.," which stand for "Isaac Denny Balch," at that time chief clerk of the seventh division. That that paper purports to be a list of entries imported by Renauld, Francois & Company from 1853 to 1857, and shows that these entries and invoices were gotten up and checked in the record room. That the book in which the record of papers going out of the record office was kept shows that May 18, 1875, on order 75½, Renauld, Francois & Co. vs. Redfield, 156 consumption entries, 259 warehouse entries, 1,481 withdrawal entries, and 448 warehouse and consumption invoices were delivered to the auditor by order of Mr. Balch, and that the paper calling for these entries and invoices was kept on file in the record office, and that witness had procured the same
130 from that office. That he did not know whether the list of entries mentioned in that paper was prepared in the custom-house, and he did not know that it was in the handwriting of any one ever employed in the custom-house, or in whose handwriting it was. That there was nothing in the paper to show the title of the cause and number thereof in which the entries and invoices mentioned therein were called for. That he did not know where these entries and invoices were before the time he had tes-

tified they were gotten up by order of the auditor when called for by the attorney for Renauld, Francois & Company.

The plaintiffs then produced as a witness in their behalf, Alvin Rose, who, being duly sworn, testified:

That from 1871 to 1877 or '78 he was a clerk in the custom-house in the second division of the auditor's department. That the first desk he occupied he was assistant to a Mr. C. C. Crandall, who gave checks for refunds on excess of deposits. That he was there from 1872 to 1874. That then he took another desk, and was an assistant to Mr. Herrick, chief disbursing clerk. That witness was the last person to verify accounts, called collector's accounts, and that he was at such desk, as he had last mentioned, during the remainder of the time he was in the custom-house. That Mr. Crandall's desk and duties had nothing to do with refund of duties upon the orders of the secretary, or decisions of the court.

That he, Crandall, refunded excess of deposits only. That witness
131 commenced to work on charges and commissions cases some time in 1874. That the circumstances under which he commenced such work were: Mr. Warner A. Childs and Mr. Berry were in the same room in the custom-house in which he was employed, and were making up these cases; Mr. Douglas, a lawyer for claimants in such cases, with whom he was acquainted, was complaining that he could not get his cases adjusted. That witness asked him why he did not ask him to work at them. Douglas said he was afraid witness could not do it, but if the auditor's permission could be obtained, he had no objections, because there were cases waiting to be adjusted. That he got the auditor's permission, and went to work adjusting some of these cases, he thought, early in 1874. The bulk of the cases came later. That Childs and Berry had been at similar work a couple of years. That Berry was an invalid, and was absent from the custom-house a good deal; that it was no part of the duties of these men to adjust these charges and commissions cases; that they did such work out of office hours for pay, the same as he did. That he never knew any labor to be done on these cases during office hours by either of these two persons, or by himself. That when he went to the auditor to ask his permission to work on these cases, the auditor asked him if he thought he could adjust them; he replied he had looked over Child's work. The auditor told him that if he wanted any instructions, or needed any explanations, he was to consult Mr. Murray, who reviewed

those cases in the naval office. That Mr. Murray was considered
132 an expert, with full knowledge, so the auditor told him, and when he, Murray, had given his approval of the adjustment, there were no questions asked in regard to its accuracy. That witness got along very well in his work of adjusting these cases, and never had any trouble or difficulty about it. Sometimes his work had to be altered. There were technical points in the cases which he did not fully understand, which he had to refer to Mr. Murray; but soon after he overcame such difficulties, and as far as regards figuring and calculations he was perfectly correct. That he should say the greater portions of these charges and commissions cases that he worked on were referred to Mr. Pierrepont and Mr. Davenport. That Berry left the custom-house about 1874, and ceased work on these cases, and Childs continued to work on them. That the auditor knew witness was to receive compensation for his work on such cases, and

he did receive it whenever the claims were collected from the claimants, or their attorneys, in the several cases he had adjusted. That he had made up and adjusted a great many cases for which he received no compensation, as they were not collected or paid during the time that he was employed at the custom-house, and he had not looked after them since.

That he remembered the cases of Renauld, Francois & Company, entitled G. F. W. Bartels et al. against Redfield, and the same against Schell.

That he first heard about those cases early in May or June, 1875. That
133 the papers in this case were brought to him from the auditor by Charles Crawford, a messenger in that department. That prior to their being brought he had had a conversation with Douglas, the attorney for the claimants therein; that when he heard of a good case he was not long in getting hold of it if he could. That as soon as the papers in any case were brought to him he went to work and made them up; that he probably took hold of the one of the earliest date first; that during the period he worked on such cases there were interruptions in making them up, as he understood in consequence of the Treasury Department refusing to pay. That between May or June, 1875, and October or November, 1876, he thought this case of Bartels against Redfield was pretty much made up as soon as it conveniently could be, but not finished; that the sheets of the statements therein laid in his drawer for a good many months, but were not closed for a year or a year and a half after the papers were first received by him, according to his recollection not until in 1876. That it was not a slight task to adjust such a case as Bartels against Redfield, as the work was very difficult and hard to do; a little mistake would necessitate the tearing up of a whole day's work, or doing it over; it was hard to tell the length of time such work would take; he thought it would take from three to six months, working three hours per day. That the invoices and entries brought to him in the case of Bartels against Redfield were taken from his desk upon a subpœna duces tecum and were brought
134 before Davenport as referee in the case of Renauld, Francois & Company vs. Redfield, and the same vs. Schell. That at the time those papers were taken from him by subpœna he was not working on them, he had quit such work some time before. That after the papers had been brought to him by Crawford the first thing he did was to check off the entries with the bill of particulars, compare them with the bill of particulars; next to see that the invoices properly belonged with the entries; next to see if the case was properly protested; then to adjust the case correctly.

That Murray examined the whole of his adjustments and computations. That Murray generally approved of his work; occasionally he found an error, but seldom, and such errors as he found were clerical errors, and were always corrected. That Mr. Murray checked all the work that witness had performed; that there had to be a date fixed up to which to compute the interest in the case of Bartels against Redfield, and the interest was the only thing that was not checked by Mr. Murray when the papers went to the referee; that he had computed the interest up to some certain date.

That one reason why the case of Bartels vs. Redfield was not certified and transmitted to Washington for payment at any time during the five months prior to March, 1877, was, as witness understood it, the statement

of the adjustment in that case was not finished; and the reason of that was, witness understood, the Government was antagonistic to all
135 cases of that kind, and it was useless to present them for payment. That he had a bill of particulars in this case when he checked off the entries. That he saw the paper which was produced by the witness Van Arsdale; that he thought and believed he knew in whose handwriting it was; that he believed it was in the handwriting of Mr. Douglas' daughter; that he never saw her write, but he had seen documents that Mr. Douglas said were in his daughter's handwriting.

He didn't know where Berry was; he hadn't heard from him in many years. Childs was employed by Bowerman in Wall street, or was at the freight pool in the New York Life Insurance Company Building.

The witness on recross-examination testified: That he knew of no other clerks employed in the custom-house by the Government who were engaged in adjusting charges and commissions cases at the time he was so engaged except Childs, Berry, and Williams. That Murray, in the naval office, did not make up any of these cases that he was aware of, but examined the works of others. That all of these persons were employed to work for and were paid by the plaintiffs, as he understood. That they were all fully competent to do this kind of work, and that Mr. Childs and Mr. Berry were both considered expert accountants. That all these cases with which he had to do came to him from the auditor; that he could not say who made the selection of cases; that after the papers in the cases came to him, he sometimes went to work upon them the same
136 day, and generally he went to work upon the cases very shortly after the papers came to him. He could not say how long after he received the papers that he went to work upon this case.

The plaintiffs then recalled Charles Crawford, who further testified in their behalf: That he had brought from the auditor's office of the custom-house certain statements of refunds of duties on charges and commissions upon importations made during the term of office of Heman J. Redfield as collector as follows:

Thomas Slocum et al. vs. Redfield, certified December 15, 1874, paid May 6, 1875, under verdict of April 19, 1864.

W. S. Wilson et al. vs. Redfield, certified December 1, 1876, paid December 30, 1876, under verdict of April 19, 1864.

I. Neaf et al. vs. Redfield, certified November 27, 1876, paid December 30, 1876, under verdict of April 21, 1864.

F. Vietor et al. vs. Redfield, certified November 9, 1876, paid December 4, 1876, under verdict of April 21, 1864.

J. A. Ubsdell et al. vs. Redfield, certified October 25, 1876, paid December 7, 1876, under verdict of April 19, 1864.

Jno. Hardt et al. vs. Redfield, certified November 14, 1876, paid December 9, 1876.

137 F. Donald vs. Redfield, certified November 9, 1876, paid December 14, 1876, under verdict April 19, 1864.

William D. Cromwell et al. vs. Redfield, certified December 1, 1876, paid December 21, 1876, under verdict of April 19, 1864.

William Brandt et al. vs. Redfield, certified January 13, 1877, paid February 12, 1877, under verdict of April 19, 1864.

William H. Bliss et al. vs. Redfield, certified January 25, 1877, paid February 20, 1877, under verdict of April 19, 1864.

Thos. Drew et al. vs. Redfield, certified January 26, 1877, paid February 27, 1877, under verdict of April 19th, 1864.

S. W. Peyser et al. vs. Redfield, certified January 25, 1877, paid February 23, 1877, under verdict of April 21, 1864.

Richard Bell et al. vs. Redfield, certified February 5, 1877, paid February 27, 1877, under verdict of April 19, 1864.

William Sturgess, jr., et al vs. Redfield, certified January 25, 1877, paid February 27, 1877, under verdict of April 19, 1864.

J. Stuart et al. vs. Redfield, certified January 26, 1877, paid February 20, 1877, under verdict of January 6, 1863.

A. Gihon et al. vs. Redfield, certified January 27, 1877, paid February 23, 1877, under verdict of April 19, 1864.

138 H. Stursburg et al. vs. Redfield, certified November 9, '76, paid January 15, 1877, under verdict of April 19, 1864.

C. Angrave vs. Redfield, certified February 16, 1877, paid March 16, 1877, under verdict of April 19, 1864.

That he could not find the statement in case of Wm. Loeschigk et al. vs. Redfield called for. It was not on file.

That he recognized the handwriting of a portion of these statements. That he had been associated with the men who wrote a portion of them and had frequently seen them write. That the statement in Slocum vs. Redfield was partly in the handwriting of M. J. Asch, the bulk of it in that of John V. Williams. In the statement of Wilson vs. Redfield the handwriting was that of Warner A. Childs, to the best of his knowledge and belief; in those of Neaf, Angrave, and Vietor against Redfield the handwriting was that of John V. Williams; and in that of Hardt vs. Redfield, Peyser vs. Redfield, Stursburg vs. Redfield, the handwriting was that of Alvin Rose; in those of Cromwell vs. Redfield, Bliss vs. Redfield, Drew vs. Redfield, the handwriting was that of Warner A. Childs. In that of Brandt vs. Redfield, the handwriting was that of M. J. Asch; in that of Bell vs. Redfield, the title is in the handwriting of Alvin Rose; the balance of the writing he was not familiar with.

139 The plaintiffs then recalled as a witness in their behalf Alvin Rose, who testified:

That he had examined the statement in the case of Donald vs. Redfield about November 30, 1874; that he adjusted the case of Stursburg vs. Redfield November, 1874; that he made up the case of Hardt vs. Redfield prior to February 28, 1875; that of Stuart vs. Redfield prior to October, 1875; that of Gihon vs. Redfield prior to December, 1876; that of Peyser vs. Redfield prior to December 31, 1874; that of Sturgess vs. Redfield prior to February, 1874; that of Bell vs. Redfield prior to December, 1876.

That he took all the cases at the time to which interest was computed. In answer to the question whether the adjustment of the Bartels case was made before or after the above cases, witness said that he could testify only from the statement therein whether the adjustment of the case of Bartels made by him was made before or after the adjustment of the cases about which he had just testified, and that he had no positive recollection about it; he didn't know where that statement was.

The witness on cross-examination testified:

That his employment as clerk at the custom-house terminated in 1879 or 1880; that he worked on the adjustment of the charges and commissions cases from 1874 to 1877, as near as he could recollect. That he should think that he adjusted in the neighborhood of twenty of these cases, perhaps more. To the best of his knowledge and belief he never refused to take any one of these cases for adjustment that he was told by
140 the auditor to adjust. That during the time he was engaged in adjusting these cases he had no doubt he could have adjusted more if he had been asked to do so; that it would be hard work for him to answer properly and fairly how much time he occupied in adjusting these cases which he had identified as having been adjusted by him; that he could say that he took the greater part of the time for three years for all the cases that he had adjusted and at the odd spells that he could take; that in the Gihon case there were thirty-seven pages to the statement, with duplicate pages thereof, making in all 74; that he should think to prepare the invoices and entries in that case, make the computations and put them on paper would require at least one day's work for each page—that is, he meant of the time that he could give out of office hours, and he meant one day not for each of the 74 pages, but for each of the thirty-seven; that it would require more time than that to do all the work; that it would take eight or ten days more than he had stated; that he thought it would be fair to say that in all the cases it would require at least one day's work to each page; that some cases were easier than others; that the Donald case was an easy case and would not take much more than one day to a page, and that there were eight pages in the statement of that case; that in the Stursburg case the statement had fifteen pages; in the Hardt case nine pages; in the Stuart case nine pages; in the Peyser case three pages; in
141 the Sturges case twenty-three pages; in the Bell case eight pages.

The witness, on redirect examination, testified:

That when he estimated the time at a page a day, adjusting these pages as an ordinary day's work, he meant such time as he could put in out of office hours, say three hours per day, that, in most cases, would include making duplicate statements, but some cases might be more intricate and take more time than that. That the adjustment and computation of duty overpaid on charges and commissions in this case was made in this way; that he would find the amount of the invoice and find the overpayments that appear there. That if the commissions were only two per cent. and they had been taken at two and a half per cent., that one-half was deducted from the amount of the invoice and the amount put on the back of the entry. That thus when the computation of overpayments of duty was endorsed on each entry the entries were sent to Mr. Murray of the naval office to see if the computations were correct. Then after Mr. Murray had examined and found them correct the computation was put on the statements by him, the witness. That when this was all completed the interest was computed on each amount to a certain day, put upon the statement, and the two footings, and the original overcharge and the interest made the amount of the claim. That he could not testify definitely as to what length of time Mr. Murray took to make an examination of his work in comparison with the length of time it took him, the witness, to make
142 the original computation. That he should say that if Mr. Murray gave his time to it he could have done it more quickly than witness

did his work; that one-half the time or one-third at least would be employed in arriving at the computation of the principal sum due. That making a review of witness' work and all things done to arrive at a final adjustment, witness thought there should be added to the length of time it took him to make the original adjustment at least one-quarter of the time. That one reason why he did not adjust more cases from 1874 to 1877 was that he didn't care to adjust cases for which he thought there was a probability he never would be paid, and it was his impression that the claimants did not present more cases for adjustment for that reason. That he knew that a number of these cases remained half finished in his drawer for more than a year or a year and a half, as there was no prospect of collecting them from the Government at that time, and he presumed that that was the reason they were not sent on by the auditor.

That this case was one of the cases which he had testified had remained in his drawer half finished for a year at least.

The plaintiffs then produced, as a witness in their behalf, W. B. Coughtry, who, being duly sworn, testified:

That he was an attorney at law, and was formerly employed by
143 Alfred Douglas, jr., from 1861 or 1862 until his death, in 1876.

That he remembered there were pending in this court the cases of Bartels vs. Redfield and Bartels vs. Schell, which were commenced by Mr. Douglas. That he did not remember particularly about this particular case, but that it was Mr. Douglas' practice to have the cases brought by him adjusted as rapidly as possible. That it was his impression that this case was partly made up, but that further adjustment was delayed because of the absence of certain papers, invoices, and entries that occurred in several cases, and that they had to wait until the papers were found in such cases, so that work would go ahead upon other cases.

That Mr. Douglas had a large number of cases referred to the collector for adjustment. That he did not recollect near enough to tell what clerk at the custom-house undertook the adjustment of this case. That he did not know that there was any obstacle or objection to the adjustment and certification and payment of this case other than the absence of some of the invoices and entries; that he did not recollect there was anything in the way of such adjustment, etc., more than in any other case. That Mr. Douglas kept all hands busy, the referee and adjusters at the custom-house in adjusting his cases; that he always had more than enough cases ready for the custom-house people to take up for adjustment.

The witness on cross-examination testified:

That he did not know that Mr. Douglas ever requested any col-
144 lector, any referee therein, any clerk or custom-house adjuster or anybody else to adjust the case of Bartels against Redfield or Bartels against Schell. That his impression was (and it was based upon results) that he must have asked somebody to adjust these cases or the papers therein would never have been gotten up. That he did not remember when he understood the papers in either of these two cases were gotten together at the custom-house for the purpose of adjustment; that it must have been before 1875 and after 1870 or 1871.

The plaintiffs then offered in evidence certain papers marked Exhibit A to K 1, as preparatory to the testimony to be given by Almon W. Griswold, who is to refer to such exhibits in his testimony.

To the admission of these exhibits and each of them in evidence the defendants, by their counsel, objected, on the ground that they were incompetent, irrelevant, and immaterial.

The referee overruled this objection, to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The defendants, by their counsel, further objected to the introduction in evidence of Exhibit A, on the ground that the same was incomplete and imperfect unless the amendments made to that regulation were also admitted in evidence to complete such regulation.

The defendants, by their counsel, also objected to the admission in evidence of Exhibit J 1, on the ground that it referred to matters that
145 existed or transpired long prior to the date of that paper, to wit, March 29, 1877, and not in the knowledge of the writer thereof.

The referee overruled these objections, to which ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The plaintiffs, by their counsel, offered in evidence certain papers marked Exhibit M 1, to and including R 1, together with papers marked 1, 2, 3, 4, 5, and 6, preparatory to evidence to be given by Almon W. Griswold, who, their counsel stated, was to refer to such exhibits in his evidence.

The defendants, by their counsel, objected to the admission in evidence of each of said exhibits as incompetent, irrelevant, and immaterial.

The referee overruled this objection, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The defendants, by their counsel, also objected to the admission in evidence of each and all the papers marked Exhibits 1, 3, and 4, on the ground that they each relate, not to this case, but to certain other cases.

The defendants, by their counsel, also objected to the admission in evidence of the papers marked Exhibits 1, 5, and 6, on the ground that they each relate to the case of Dale against Barney, and not to this action.

The defendants, by their counsel, also objected to the admission in evidence of the papers marked Exhibits N 1 and O 1 on the ground
146 that they each relate to the case of P. A. H. Renauld et al. vs. Schell, and not to this action.

The defendants, by their counsel, also objected to the admission in evidence of the papers marked Exhibits Q 1 and R 1 on the ground that they each relate solely to the cases therein specified and not to this action, and to a compromise made in such specified cases.

The referee overruled these objections, to which ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The plaintiffs then produced as a witness in their behalf Almon W. Griswold, who, being duly sworn, testified that in consequence of decisions of the courts of the United States in New York and elsewhere, in relation to the legality of the assessment of duty on certain charges for freight or inland transportation, he had an interview in Washington with James Guthrie, Secretary of the Treasury, in the autumn of 1855, relating to discontinuing such exactions of duty, which the Secretary promised to do; and the Treasury Department, under date of February 1, 1856, issued a volume of instructions known as "General Regulations No. 63," which contain, on pages 21 to 23 thereof, instructions to collectors of customs and others on the subject.

The defendants, by their counsel, moved to strike out the testimony of

this witness, first, on the ground that it was not evidence but an expression of an opinion; second, on the ground that the same was irrelevant and immaterial.

147 This motion the referee denied, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

That between February, 1856, and January, 1863, letters or circulars were written or issued by the Treasury Department in relation to the assessment of duty on such charges and also on commissions which have been offered in evidence, and marked Exhibits A, B, C, D, E, F, G, H, and I.

The defendants, by their counsel, made the same motion on the same ground as to this evidence.

The referee denied the motion, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

That the Treasury Department issued a circular known as Additional Instructions, dated May 21, 1863, which has been offered in evidence, and marked Exhibit J.

As to this evidence the defendants, by their counsel, made the same motion upon the same grounds.

This motion the referee also denied, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

That between January, 1860, and November 30, 1863, verdicts were taken for the plaintiffs by consent of the United States attorney as attorney for the defendants, in some three hundred cases. On January 6, 1864, verdicts were taken in twenty-one cases more; on February 26,

148 1864, in twenty-two more; March 14, 1864, in one more; April 19, 1864, in ninety-six more; April 21, 1864, in sixty-seven more. That among those taken on the last-mentioned date was the verdict in this case of Bartels vs. Redfield. That on May 27, 1864, verdicts were taken in thirty-seven more cases, and in each and all these verdicts was an order referring them to the clerk of this court for adjustment. That a force of three or four accountants or experts in custom-house matters was employed in the office of the clerk of this court, the referee, in making the computations and preparing the statements of the adjustment of these cases. That on March 16, 1865, a few days after Judge Nelson returned from Washington, after the adjournment of the United States Supreme Court, an order was entered on the court's own motion and without witness' knowledge as plaintiffs' attorney in the cases in which he appeared, vacating the orders of reference to the clerk, in all cases in which the work of adjustment had not been actually commenced. That on July 1, 1865, the order was made by Judge Nelson, at Cooperstown, referring all cases which had been referred to the clerk, in which Messrs. Kaufman, Frank & Wilcoxson were attorneys, to the collector of the port. That this case of Bartels vs. Redfield, having been commenced by Kaufman, Frank & Wilcoxson, who were then the attorneys of record for the plaintiffs, by force of this order stood referred to the collector of customs.

149 That there were on July 1, 1865, about 269 cases unadjusted of those which had been referred to the clerk, and 180 of these were by operation of the order of July 1, 1865, transferred to the collector; and there were at that time about 767 other charges and commissions cases

pending in which verdicts had not been taken, but which were like these in which verdicts had been taken. That when the order referring the cases to the collector was made, application was made to him to go on with the adjustment of the cases, but very little was done about it, and finally the U. S. attorney, Daniel S. Dickinson, on December 28, 1865, wrote to C. P. Clinch, esq., special deputy collector of the port, a letter requesting the adjustment of eight certain cases therein mentioned. (See Exhibit P.) That the collector of customs did not hurry the adjustment of the cases referred to him, and none of the cases, even those which were specified in the letter of U. S. Attorney Dickinson, were adjusted until November, 1870, five years afterwards. That there had been a change of administration. Mr. Lincoln had died in 1865; Mr. Dickinson, the U. S. attorney, had died early in 1866, and been succeeded by Mr. Courtney. And a letter from the Secretary of the Treasury to Edward Jordan, the Solicitor, dated October 23, 1866, and Mr. Jordan's letter to Mr. Courtney, dated October 24, 1866, were written, which letters have been offered in evidence and marked Exhibits Q and R. That notwithstanding verdicts had been taken in these cases with a reference first to the clerk
150 of the court and then transferred to the collector to adjust the amount, the Government now refused to adjust or pay them, claiming that the cases had not been skillfully defended by the U. S. district attorney.

That the Government thereafter demanded the trial of another case on the ground that the cases tried had not been properly tried on the part of the district attorney. And Hutton vs. Schell, the first case on the list, which District Attorney Dickinson had requested the collector, in his letter of December 28, 1865, to adjust, was selected by the new U. S. attorney as the case to be tried, with the understanding that if the plaintiffs won that case, then all the other charges and commissions cases in which verdicts had been taken were to be adjusted and paid.

The case of Hutton vs. Schell was tried in December, 1866, and the plaintiffs recovered. The U. S. attorney, S. C. Courtney, who defended the case, prepared to take the case to the United States Supreme Court, but before the writ of error was actually sued out the Government at Washington claimed that this case had not been properly tried on behalf of the defendant, and sent on from the Treasury Department one Simon Towle, to defend the interest of the Government on such a trial; and thereupon it was proposed by this special representative of the Government that if the plaintiffs in that case (Hutton vs. Schell) would consent that that verdict be set aside and a new trial be had, and if upon
151 that new trial the plaintiffs should recover, the Government would then actually acquiesce and proceed to adjust and pay that and the other charges and commissions cases. That the plaintiffs in the Hutton case accepted the Government's offer, and the verdict taken on December 17, 1866, was set aside and the case tried the second time in March, 1868. The Government was represented on this trial by both Mr. Towle and the district attorney, Mr. Courtney, and was again beaten.

That the report of the second trial of that case is to be found in the 6th Blatchford's Reports, p. 48.

That at the time this trial ended the Government at Washington was in an unsettled state. That the impeachment trial of President Johnson

was pending or had just terminated, and the Presidential campaign inaugurated shortly afterward, and nothing was done with that or any other charges and commissions cases in that year, and in consequence of obstructions interposed by the Government, and this new litigation of these cases by the Government, only twenty-six charges and commissions cases were adjusted and paid during four years from January, 1866, to December 31, 1869, as follows:

12 cases in 1866, 10 cases in 1867, 3 cases in 1868, 1 case in 1869, and all of these cases except one, Watson vs. Redfield, were cases referred to the clerk of this court on which the work of adjustment had been commenced when the order of March 16, 1865, was entered,
152 but which were not actually completed by him till the several dates mentioned, while during the three previous years, 1863, 1864, and 1865, when the cases stood referred to the clerk of the court, there were adjusted and paid 234 cases, all of which were adjusted by the clerk of the court, except 15, which were adjusted by the collector between July 1 and November 28, 1865.

The plaintiffs, by their counsel, then offered in evidence pages 133 to 137, inclusive, of John Sherman's letter to Congress, dated December 14, 1877, Executive Document No. 27, 45th Congress, second session.

To the admission in evidence of these pages the defendants, by their counsel, objected, on the ground that the same was irrelevant and immaterial, which objection referee overruled, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

These pages were then admitted in evidence, and copies thereof are hereto annexed, marked Exhibit S 1.

The witness then testified that the orders of reference to the clerk were revoked on March 16, 1865. That that revocation did not apply to cases in which the work of adjustment had actually commenced, and it was held that if a notice of hearing had been served and a subpœna duces tecum issued for the papers from the custom-house, that was such a commencement, and the clerk of this court was busy the whole of the year 1865; and owing to the delay in finding the papers at the custom-
153 house, two or three years were occupied in finishing up such cases. That on March 4, 1869, a new administration came in; a new U. S. district attorney was appointed, and all the arrangements made in relation to the result of the second trial of the Hutton case were ignored by the new Government officials, and further litigation ensued. That the verdict taken in Hutton vs. Schell in March, 1868, remained unpaid and unadjusted, and new questions were raised in other cases by Judge Pierrepont, the new U. S. attorney, under instructions from the Solicitor of the Treasury; and some of these new questions were raised in the cases of Greenleaf vs. Schell (6 Blatch., 225), and Tomes vs. Redfield (7 Blatch., 139). That the latter decision was made early in 1870 while Judge Pierrepont was U. S. attorney. That he, Pierrepont, informed witness that he then advised the Treasury Department to acquiesce in the result of the second trial of the case of Hutton vs. Schell, and the other cases above referred to, but that before much, if anything, was actually done, Judge Pierrepont resigned as U. S. attorney about July, 1870, and Noah Davis was appointed in his place.

That on December 28, 1870, acting apparently on what Judge Pierre-

pont had done, Noah Davis consented to the entry of verdicts in one hundred more charges and commissions cases with a reference to the collector of customs for adjustment, so that on January 1, 1871, after
154 deducting the twenty-three cases adjusted by the collector during 1870 there were about 240 verdicts standing referred to the collector, which were unadjusted, and 140 of these were verdicts which had been taken on April 19 and 21, 1864, or prior to that date.

The Treasury Department finally proposed to the attorneys for the plaintiffs in the remaining charges and commissions cases, in which no verdicts had been taken, that if they would consent to have them referred to Mr. Pierrepont, late U. S. district attorney, as referee, to adjust on the basis of the decisions of the courts in similar cases, the Government would consent to have them so referred and disposed of. See Exhibit T. That this proposition of the Government was accepted by plaintiff's counsel, and on April 22, 1871, 54 cases were referred to ex-Judge Pierrepont; June 21, 1871, 7 more cases were referred to him; April 19, 1872, 135 more cases were referred; on August 13, 1874, 37 more cases were referred; making 233 cases referred to Pierrepont as referee, while there were about 240 cases which stood referred to the collector of customs. That the adjustment of the cases before Pierrepont progressed as rapidly as possible with the clerical force which the collector furnished from the custom-house to assist the referee in making the computations and preparing the statements. That in order to secure progress in the adjustment of the cases there was a clause in the order of reference authorizing the referee to give notice of bringing on the reference, and the
155 referee availed himself of that authority, and pressed the work of adjustment as rapidly as possible with the help furnished from the custom-house. See Exhibit U.

Mr. Ogden, the Auditor, stated to witness upon his demand for more rapid adjustment of these cases, that the Secretary of the Treasury was unwilling to, and did not allow, any additional clerks, any assistance to the regular refund clerk at the custom-house, so that while the collector detailed such clerks from other desks as were willing to work out of custom-house hours for pay, to work on cases which stood referred to Mr. Pierrepont, who insisted that his cases should be pushed along as fast as possible, the collector had scarcely any one left at the custom-house who could be, or at least who was detailed to work on the cases which stood referred to himself, the collector, except at intervals when they happened not to be employed on cases referred to Pierrepont; and from January 1, 1871, to December 31, 1877, seven years, only 110 cases were adjusted of the 240 cases remaining unadjusted of those which were referred to the collector, and of those 110 only 29 were cases which were referred to the collector by the order of July 1, 1865; and the way those cases were adjusted was this: The regular refund clerk, John V. Williams, in addition to the current duties of his desk, which occupied nearly all his time during office hours at the custom-house, at the request of the Solicitor of the Treasury, had been detailed or authorized by the auditor of the
156 custom-house to work early and late out of custom-house hours, at Judge Pierrepont's office, on the adjustment of cases referred to the latter, he had little or no time which he could devote to the adjustment of cases which were referred to the collector. The only means the plaintiffs

in those cases had of having their cases adjusted (if willing to pay out of their own pockets to have the work done, without permission to tax it in the costs as witness' fees) was to apply to the collector or auditor to detail one of the two or three regular clerks in the custom-house employed at other desks and work, whom the collector or auditor allowed to be employed to work on the adjustment of charges and commissions cases out of custom-house hours, and if private arrangements, satisfactory to such clerk, were made, and he could be spared from work on cases which were referred to Judge Pierrepont, or his successor, Davenport, then the auditor would give instructions to have the papers, invoices, and entries got up in the record office and brought to him, the auditor, who would then deliver them to the clerk, who was to make the adjustment under the collector's instructions as referee. As this clerk had first to perform the regular duties of his desk, and could only work on the case out of regular hours, it took a long time to adjust a case of such magnitude, and from January, 1871, to December 1877, nearly seven years, the collector adjusted only 110 of the 240 cases which stood referred to him, although having all the papers, invoices, and entries in the record office of
157 the custom-house at his command and being at liberty to proceed with their adjustment at any time it might suit his convenience to do it. The collector made these adjustments without any notice to plaintiffs or their attorneys, but reported the amount to the clerk of the court.

That on December 31, 1872, Noah Davis resigned as U. S. district attorney and George Bliss, was appointed January 1st, 1873, and this change worked some delay in the progress of the adjustment of the cases. The statute of limitations question in Dale vs. Barney occupied about a year; but that those pending before Pierrepont progressed reasonably well till Judge Pierrepont was appointed U. S. Attorney-General in the autumn of 1874, leaving about 105 of the 233 cases which had been referred to him unadjusted.

That in 1874 the Government officials repudiated everything which had been done by successive Secretaries and Solicitors of the Treasury and U. S. attorneys prior to this time touching the charges and commissions cases, and suggested that all the different issues involved in those cases be taken to the U. S. Supreme Court.

That the letter of Mr. Bliss, June 4, 1874, Exhibit W, was on June 10, 1874, referred by the Secretary of the Treasury to the Attorney-General for his opinion, Exhibit X; that on June 25, 1874, the Solicitor-General made his report thereon endorsed by the Attorney-General, Ex-
158 hibit Y; that the Secretary of the Treasury proposed a compromise in the letter of July 1, 1874. This the plaintiffs accepted on August 1, 1874, by a stipulation endorsed on the back of the Secretary's letter, Exhibit Z.

The plaintiffs, by their counsel, then offered in evidence that portion of Exhibit 3 forming part of the Executive Document No. 27, House of Representatives, 45th Congress, second session, transmitted with the letter of the Secretary from the commencement of said Exhibit 3, on page 12 of said executive document, to and including the 25th line on page 20, for the purpose of showing the official report of the action of the Government in the prosecution of these cases and cause of delay in proceeding.

To the admission in evidence of these pages the defendants, by their counsel, objected, on the ground, first, that the same was irrelevant and immaterial; second, that at most they were the opinion of the writer or writers thereof; third, that if they were introduced as evidence to prove facts, they were hearsay evidence of the statements claimed to be facts, and therefore inadmissible.

These objections the referee overruled, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

These pages were then admitted in evidence and copies thereof are hereto annexed, marked Exhibit T 1.

The witness then testified that upon this stipulation being signed
159 a large number of the cases were referred to John I. Davenport, esq., as referee, to adjust on the basis of the decisions theretofore made by the courts, as follows:

60 cases on December 4, 1874; 26 more on the same day; 368 on January 19, 1875. That the stipulation which was made July 1, 1874, was repudiated by the Government. About May 11, 1875, a motion was made to vacate all the orders of reference which had been made on the consent of the U. S. attorney, Exhibit A 1. That although the motion to vacate all the orders of reference was denied (See Exhibits B 1, C 1, D 1) the work of adjusting cases before the referees was at once suspended.

That as attorney for a large number of plaintiffs, in the hope of securing a resumption of the work of adjustment and settlement of the remaining cases, witness proposed to the Government a further concession by accepting currency instead of gold in a letter to George Bliss, U. S. attorney, dated June 28, 1875, Exhibit E 1. This proposition the U. S. attorney advised the Secretary to accept in a letter under date of July 2, 1875, Ex. F 1; that this offer was not accepted at the time as will be seen from the letter from the Solicitor of the Treasury dated December 21, 1875, Ex. G1, in which he instructs George Bliss, U. S. attorney, to take every legal question involved in the charges and commissions cases to the Supreme Court, and that no more refunds would be made until final judg-
160 ment of the Supreme Court had been made. That witness was the attorney for the plaintiffs in a large number of these cases, and he never made any representations to the Secretary, or any one else, as to the number of cases or amounts involved, as contained in the letter of the Solicitor of the Treasury of December 21, 1875.

That between December 21, 1875, and February, 1876, efforts were made by the attorney for plaintiffs in these cases, and George Bliss, U. S. attorney, to agree upon a statement of facts in a case that should involve all the issues which the Government desired to have submitted to the Supreme Court, and the Solicitor under date of February 7, 1876, wrote to George Bliss, U. S. attorney, in respect to these matters. See Exhibit H 1. Meanwhile, all proceedings looking towards the adjustment of these cases had been suspended from the spring of 1875, to October, 1876. That the Hon. Lot M. Morrill, who had become Secretary of the Treasury upon the resignation of Mr. Bristow, about August 4, 1876, took up the charges and commissions cases, and the stipulation of July 1 and August 1, 1874, between the Government and the importers, and on September 26, 1876, wrote respecting the same to George Bliss, U. S. attorney. See

Exhibit I 1. That between May 24, 1875, and November 2, 1876—a year and a half—no cases were adjusted by the collector or Davenport, the referee, and only six which had been previously adjusted were paid during
161 that period. But that after some negotiations between Mr. Bliss, U. S. attorney, and witness, as plaintiffs' attorney, and Mr. Morrill, Secretary of the Treasury, in November, 1876, by which claimants were induced to waive payment in coin, the following letters being written: Bliss to Arthur, November 1, 1876; Griswold to Morrill, Griswold to Bliss, November 6, 1876; Bliss to Morrill, and Morrill to Bliss, November 14, 1876 (See Exhibit I 2–6), the work of adjusting and paying these cases were resumed in November 1876 and continuing until about March, 1877, when another change of administration took place. Mr. Morrill was superseded by John Sherman as Secretary of the Treasury, and between October 14, 1876, and March 3, 1867, 53 cases were adjusted and transmitted to the Treasury Department for payment, and were paid. That of this number 21 were adjusted by the collector of customs, as referee, and 32 were adjusted by Mr. Davenport as referee, leaving unadjusted on March 4, 1877, about 124 cases of those which stood referred to the collector, and 43 of those 124 unadjusted cases were cases in which the verdicts were taken on the same day, and at the same time with this case of Bartels et al. vs. Redfield, on the 21st of April, 1864; and 60 of them were similar verdicts taken two days before, on the 19th of April, 1864. That during the interval of nearly thirteen years in making the adjustment of this case there have been five different collectors, since the order of July 1, 1865, was made.

162 That the plaintiffs made a motion to the court February, 1877, to open the judgments which they had recovered in prior suits, entitled P. A. H. Renauld, et al. vs. Redfield, and the Same vs. Schell, brought for the money sought to be recovered in this action, but which was omitted owing to the reported inability of the customs officials to find all the plaintiffs' invoices and entries, which belonged on file at the custom-house, and to mistakes made in the adjustments of the amounts, and on March 7, 1877, the papers which had been lost or concealed at the custom-house having been found, the court granted the plaintiffs' motion in that and the case of Renauld et al. vs. Schell, and made an order therein opening the judgments in the first suits, and sending the cases to John I. Davenport as referee, to re-adjust according to the terms of the original verdict. That after this order was granted a part of the papers, invoices, and entries, or as many of them as could be found on file at the time, were brought from the possession of the collector of customs before the referee upon a subpœna duces tecum, issued about March 9, 1877, but as all the entries and invoices called for in plaintiffs' bill of particulars in the cases were not produced, the reference was not immediately proceeded with.

Meanwhile the defendant, Redfield, died on July 22nd, 1877; and all proceedings in that case were stayed till his executors qualified on May 3, 1878, and were substitued as defendants September 11, 1878. Mean-
163 while the reference proceeded in one of the other cases, viz, in Renauld vs. Schell. That on May 20, 1878, the U. S. attorney made a motion to vacate the order made by Judge Blatchford on March 7, 1877, opening the judgment; that the papers on this motion were very voluminous and a decision was not had until September 7, 1878, when

the court made an order denying said motion. That on October 3, 1878, the U. S. attorney gave notice of presentation to the court for settlement of a proposed bill of exceptions to the decision of the court denying the the defendants' motion. That the same day the court ordered that the settlement of the defendants' bill of exceptions be suspended till the coming in of the referee's report in the case, and the entry of judgment thereon be made.

That on March 4, 1877, a new administration came in, and shortly after payments of the charges and commissions cases were again suspended by order of the Secretary of the Treasury; the reasons for which may be gathered from the letter of the U. S. attorney, Woodford, to Mr. Talbot, Solicitor of the Treasury, dated March 29, 1877. Exhibit J 1. That the Government finally, about July, 1878, ordered writs of error to be sued out in 32 revenue cases which had been adjusted and judgments entered—although no bills of exception had been filed in any of them—taking them to the U. S. Supreme Court at the October term, 1878. The defendants in error made application to the Treasury Department to have these cases advanced on the calendar, but the application was denied.

164 That at the October term for 1881, after three years' delay, the writs of error in 26 of these cases were dismissed upon the motion of the U. S. Solicitor-General, viz, the cases number 109–10–11–14–15–17–19, 120–1–2–3–4–5–6–7–8–9, 130–1–2–3–4–5–6–7–8, on the calendar of the court for that term.

That about October or November, 1878, witness applied to Mr. Davenport to go on with the reference in the case of Renauld et al. vs. Redfield, and then learned from the referee that General N. M. Curtis, then acting as special agent of the Treasury Department in the adjustment and settlement of charges and commissions cases, had taken from his, Davenport's, possession in the office of the clerk of the U. S. circuit court where they had been since March, 1877, all the entries and invoices in this case of Bartels vs. Redfield, except three or four which were in the safe, and carried them away to the custom-house, where they remained till said Curtis retired from the position of special agent, and where they were subsequently found. That General Curtis was appealed to by witness to adjust said case and also the case of Bartels et al. vs. Schell, and in reply to the application in the latter case he received the letter dated April 9, 1881, Ex. P 1.

That the said Curtis did adjust and certify for payment a number of other cases against Redfield similar to this case of Bartels, in which the verdicts were taken on the same day, and they were paid. See Ex. Q 1.

165 The defendants, by their counsel, moved to strike out the testimony in the last paragraph on the ground that the same was irrelevant and immaterial.

The referee denied this motion, and to this ruling the defendants, by their counsel, excepted; which exception was duly noted and allowed by the referee.

The witness then testified that the Supreme Court having decided the case of Bronson vs. Schulten at the October term, 1881 (104 U. S. Rep., 410), the order of March 7, 1877, opening the judgments in the case of P. A. H. Renauld et al. vs. Redfield and the same vs. Schell was vacated; and the reference before Davenport in the case of Renauld vs. Schell

which had been pending for two or three years and nearly completed was abandoned. That the decision in Schulten vs. Bronson was made about January, 1882, and thereupon the plaintiffs took measures to have this case, which stood referred to the collector by the order of July 1, 1865, referred to the clerk, and on June 30, 1882, an order was entered referring it to Joseph M. Deuel, esq., as referee.

The defendants, by their counsel, moved to strike out all the testimony of the plaintiffs' witness, Almon W. Griswold, on the ground that it was immaterial and irrelevant.

The referee overruled this motion, and to this ruling the defendants, by their counsel, excepted; which exception was duly noted and allowed.

This witness then testified on cross-examination that he presumed
166 E. Delafield Smith succeeded Kaufmann, Frank & Wilcoxson as attorney for the plaintiffs in this case, but that he did not remember exactly when. He did not know when Smith became such attorney, but he thought about 1866, and he continued to be such attorney, as far as he knew, until his death, which was, he thought, about 1878.

That witness' position in this case was that of counsel, and he had been counsel ever since Marsh, Wilson and Wallis were substituted attorneys for the plaintiffs, and for two or three years before that. About December, 1876, or January, 1877, witness was the counsel for Renauld, Francois & Company, and while not counsel in this case he was assisting them in getting control of it, before which time he was never counsel in this case. That he was never the attorney of record in this case, and prior to the time of being counsel he had no connection with this case. He was the attorney for the plaintiffs in the case of P. A. H. Renauld et al. vs. H. J. Redfield, who were the same plaintiffs as the plaintiffs in this action. That action was commenced about October 20, 1860, and was brought to recover excessive duties paid on charges and commissions. That he served a bill of particulars in the case of P. A. H. Renauld et al. vs. Redfield, of which he had spoken. That in that bill of particulars the first entry mentioned was the Franklin, January 3, 1853, and to the best of his belief there were
no entries prior to that date. That neither this action nor the
167 action of Renauld against Redfield sought to recover duties paid prior to November 1, 1853. That the bill of particulars served in the case of Renauld against Redfield was made from a list of the plaintiffs' importations, which he then held in his hand; that this first portion of the list of plaintiffs' importations commencing June, 1851, and ending May 22, 1855, was a copy of the plaintiffs' importations filed with the auditor at the custom-house about July 9, 1857, under instructions given by the Secretary of the Treasury about that date in reply to an application of Renauld, Francois & Company under date of May, 1857, to have the duties on comimssions refunded to them without suit.

That this list was checked by the auditor, S. G. Ogden, jr., at the time it was presented, about July 9, 1857, with instructions, or checked in a way that invoices and entries were to be gotten up.

That when Mr. Schell came into office, July 1, 1857, he refused to carry out the instructions of the Secretary of the Treasury to refund this money, and after waiting two and one-half or three years for him to do it the suit of Renauld, Francois & Company was commenced, some time in 1860, he thought. And then Renauld, Francois & Company were re-

quested to furnish witness with a continuation of their list of importations down to July 1, 1857, which they did, and from these two lists the bill of particulars served in the case of Renauld vs. Redfield was prepared,

168 leaving out of the first portion of that list importations made prior to Redfield's term as collector, excepting warehouse entries made prior to his term, the duties upon the withdrawal of which were not paid until after November 1, 1853, the date of Mr. Redfield's assumption of office.

That the bill of particulars in the case of Renauld vs. Redfield was not the same as the bill of particulars in this case. That it covered the same period of time and was substantially the same with certain exceptions, probably there might be a difference of fifty entries, he, witness, could not say definitely.

Question. Attached to this paper which you have had in your hands is a subpœna duces tecum in the cases of Renauld vs. Redfield, dated March 23, 1863, and issued out of this court, at the instance of the plaintiffs, to Hiram Barney, collector of customs, etc., directing him to produce before the clerk of the court the consumption and warehouse entries of Renauld, Francois & Co., by the vessels whose names and dates of arrival are given in the annexed list. Is the list of entries given in that paper the list of entries directed to be produced by such subpœna? Answer. The list, excepting those that are crossed out, or excepting those through which the three pencil marks have been drawn, is the list called for by the subpœna.

Question. At the end of this paper and entitled in the case of Renauld vs. Redfield, is an affidavit, purporting to have been made by George P.

169 Andrews, in which he states that he recognizes the signature E. Delafield Smith signed to the admission of service of the bill of particulars in the case, and dated May 3rd, 1861, the same having been signed by the deponent in the ordinary course of business. Is that the affidavit of George P. Andrews, from 1859 to 1865 clerk and assistant district attorney in this district? Answer. Yes; the district attorney's office denied that any bill of particulars had been served. I found it necessary to go to Mr. Andrews, by whom the admission of service was written, and obtained from him this affidavit, showing that the admission of service was signed by him in the ordinary course of business in the district attorney's office.

The witness being shown a paper testified that beginning with the vessel "Franklin, January 3, 1853," and omitting some pencil interlineations of the names of vessels, and omitting the duplicate entries beginning with the "Corinthian, July 6, 1855," and ending with "Saint Paul, May 22," 1855, he believed that the paper shown him was an exact copy of the bill of particulars served in the case of Renauld vs. Redfield, and omitting the pencil marks, that paper was presented to the district attorney as it was, and the admission by him of the service thereof was endorsed thereon.

The defendants, by their counsel, then offered in evidence the bill of particulars served in the case of P. H. A. Renauld et al. vs. H. J. Redfield.

170 To the admission in evidence of this bill of particulars the plaintiffs, by their counsel, objected on the ground that the same was wholly immaterial and irrelevant to either of the two questions submitted to the referee to be passed on by him.

This objection the referee sustained, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

Upon defendants' request the referee marked this paper Defts.' Exhibit for Identification No. 1, March 16, 1885. A copy of which is hereto annexed, marked Defendants' Exhibit No. 8 for Identification, Apr. 1, 1885. J. M. D.

The witness was then asked the following question: "Q. Many of the entries in the paper marked Defendants' Exhibit for Identification No. 1 of this date, and covered by suits of Renauld vs. Redfield, are in this action before the referee and the bill of particulars therein, are they not?"

The plaintiffs, by their counsel, objected to this question upon the ground that it was incompetent to interrogate a witness as to a paper excluded from evidence, but simply marked for identification. The referee sustained this objection, and to this ruling the defendants, by their counsel, excepted, which exception was duly noted and allowed.

The witness on being shown the paper marked Defendants' Exhibit for Identification No. 1, and having had pointed out to him among the entries therein mentioned as in the case of Renauld vs. Redfield the ware-
171 house entry per the Admiral, April 11, 1857, and being also shown the bill of particulars in this action, and having pointed out in such last-mentioned bill of particulars the warehouse entry per Admiral, April 11, 1857, testified that he did not know whether it was the same entry in both bills of particulars; that there were often two or three different entries by the same vessel, and he could only tell whether they were the same entries by investigating the fact whether or not there were two or more entries by the Admiral of that date.

That in the case of Renauld vs. Redfield a verdict in favor of the plaintiffs was taken on commissions alone May 3, 1861, and a judgment was entered thereon in favor of the plaintiffs May 30, 1863. That that judgment and verdict were both vacated and set aside about January 11, 1864, and subsequently a verdict was rendered in favor of the plaintiffs on the 11th day of January, 1864. That the case was referred to the clerk of this court, or his deputy clerk, R. E. Stilwell, who adjusted the same as referee by his report dated February 16, 1864. That he did not know whether the referee was attended by the counsel for the respective parties in the case or whether the referee took testimony in support of the plaintiffs' claim. That according to his recollection of the way in which such cases were adjusted a subpœna duces tecum was issued to the collector to produce the custom-house papers before the referee; that the
172 referee had two or three custom-house experts to make the computations and upon the result of that computation he made his report. According to witness' recollection there was no appearance of counsel before the referee in one case out of five before his report was made.

The witness on being shown a certified copy of the referee's report in the case of Renauld vs. Redfield, dated February 17, 1864, and the following statement in that report, "I, R. E. Stilwel, to whom the matter was referred, do report, that I have been attended by counsel for the respective parties and have taken and examined the testimony offered in support of the plaintiffs' claim, and do find that the plaintiffs are entitled to judgment on said verdict for $10,358.25," testified, that he had no recollection of attending before the referee on the adjustment of that case.

That he did have a recollection that the representation was made to him that a large portion of the entries could not be found, but his recollection was that that information came from Mr. Lewis, who was at that time a clerk in the record room of the New York custom-house, who acted as the representative of the collector in answering subpœnas duces tecum served for that purpose. That he did not remember that upon the referee's report in the case of Renauld vs. Redfield, judgment was entered in favor of the plaintiff on the 17th day of February, 1864.

Witness on being shown a certified copy of the judgment roll
173 in that case and asked to look at it and refresh his memory if he could, testified that he saw there a certified copy of the judgment roll of that date, and he remembered that judgment was entered about that time, but that it did not refresh his recollection as to the exact amount or the exact date. In fact, he did not think he had anything to do personally with entering up that judgment; that he did not remember the date when the judgment was paid and satisfied of record, but he should think it was a month or six weeks after the entry of the judgment, perhaps less. That he should think that the judgment in that case was paid and satisfied of record in the year 1864.

Question. "You state that between January, 1866, and February, 1870, the Government refused to adjust and pay these cases or any of them. Did you ever, between these dates, make any application to the court to have this case now before the referee adjusted by the court, or any officer of the court, or any one else?" Answer. "No, sir; not this case." That he did not know of any one making such application. That when by testifying that during some two or three years prior to 1878 he was assisting the plaintiffs in getting control of this action he meant to be understood that this action had been commenced under the direction of Alfred Douglas, jr., through attorneys employed by him. That Alfred Douglas, jr., died about 1876; that his attorney had since died. That this
action had been substantially adjusted in 1875 or 1876, and was
174 lying in abeyance. And from the beginning of 1876 or from the time Mr. Douglas died, about August of that year, witness thought he tried to persuade Mr. Ogden, the auditor, to have the adjustment of this case finished so that judgment might be entered, and he repeated those applications several times between that date, August, and December, 1876.

That he did not know whether Mr. Douglas commenced this suit at the request of the plaintiffs, that of course it was commenced in their interest; that he understood that Mr. Douglas claimed that he was entitled to a percentage of the amount that might be recovered in this action; that he was entitled to control and manage the prosecution of it. That he could not say anything further concerning that matter except that the plaintiffs were anxious to get their money and did not wish to quarrel with the attorneys who were managing their case or have some one else substituted in their place so long as there was a reasonable chance of collecting the money. That they hoped to get their money through their attorneys of record, and they invoked his, witness', services in order to facilitate the recovery of the money in this case without any change of the attorney of record. That he did not know of any other reason why the plaintiffs, so far as they were individually concerned, could not have prosecuted this action if they had desired, except they supposed they could not displace the attorney of record

without paying him in advance of the collection of the money.
175 That in 1875 or 1876, when he said he applied to Mr. Ogden, the auditor, to have the adjustment of this case completed, Mr. Ogden said that he would look into it and see what could be done. Witness, in answer to the question "Do you know any reason why it was not adjusted?" said he thought he did; that a Government employé went to Renauld, Francois & Company in the absence of all the members of the old firm of Renauld, Francois & Company and made a statement to a junior member of a succeeding firm that he knew of a large sum of money due the firm of Renauld, Francois & Company, and for a percentage of 20 or 25 per cent. he would undertake to collect this money, and represented that with his aid and assistance the money could be collected in thirty or sixty days. This junior member of the succeeding firm of Renauld, Francois & Company made an agreement to pay this government employé or clerk 20 or 25 per cent. of the amount that might be recovered in plaintiffs' claim in this case. That when that agreement was signed this employé made known the nature of the claim. This member of the firm who had recently become a member of it was unacquainted with the existence of this claim, and supposing it was all right gave a ratification of this agreement. That a few weeks subsequently, upon the arrival of Mr. Amy, who had been absent, witness thought in Cuba, and the communication to him of the substance of this contract, he, as an old employé of the firm of Renauld, Francois & Company, knew all about the case, told his young part-
176 ner he had made a mistake; that the claim was in the hands of the attorneys who were attending to the prosecution of it and immediately notified this custom-house clerk that the firm of Renauld, Francois & Company, who had signed this agreement, had no interest in the claim, and that he should refuse to carry out the agreement, but offered to make him some reasonable compensation, which he declined. That he thought Mr. Ogden gave as his reason that there were a great many of these cases; that they could not all be adjusted at once. That Mr. Douglas, or his attorney, had other actions as well as this, and were pressing them, and that he would see what could be done. That subsequently Mr. Ogden referred to this quarrel, as he called it, between Renauld, Francois & Company and Mr. Asch, the employé referred to, and asked why they did not come to some understanding or some amicable settlement of the matter.

That witness stated to Mr. Ogden as far as Mr. Rose's compensation for adjusting the case was concerned, the plaintiffs would make themselves personally responsible for those charges so that there need not be any delay upon that account; and he repeated what he had said upon a previous occasion, that he would see what he could do.

177 On another and subsequent interview, Mr. Ogden referred a second time to this controversy between Renauld, Francois & Company and Mr. Asch, and asked why that could not be adjusted. That the collector in 1875 and 1876 was nominally the referee to adjust this case. That he did not know of any reason why the collector, as such referee, could not have completed, or have had completed the adjustment of this case if he had desired. That he did not at any time make application to the collector as such referee, to complete or have completed the reference in this case. That in April or May, 1882, or earlier than that, he made an application to the collector to go on and adjust this case; that the col-

lector declined to do it and witness made application to take the case away from the collector and refer it to the clerk of the court.

That of his own personal knowledge he only knew of the applications for the adjustment of this case that he had testified to; those made to Ogden, the auditor, he considered as made to the referee, and those subsequently to General Curtis.

That during Collector Redfield's term of office, he believed it was customary to make at the custom-house what are called naval-office copies of entries. That the adjustment of this case or any other charges and commissions case could not be made from such naval-office copies of entries without the invoices also. He did not know whether or not the adjustment of some part of this case had been made from naval-office
178 copies of entries. He presumed that some of the entries and invoices in this case had been accessible at the custom-house from the date of the verdict in this case to the present time, and did not remember whether the items added for charges and commissions in each one of the entries in this case were exceedingly uniform in amount, and of a fixed ratio to the invoice value of the goods. That according to his best information and belief the compromise, suggested in the Secretary's letter to George Bliss of July 1, 1874, in which the secretary proposed or offered, if the plaintiffs in the charges and commissions cases would stipulate to make no claim for recovery under prospective protest made to prior collectors, the Government would not appeal the charges and commissions cases to the Supreme Court upon any of the five or six questions or points suggested by the district attorney—came from the Government—at all events witness knew nothing about it until he was informed by the district attorney, Mr. Bliss, that if he wanted his cases adjusted and paid, he must sign a stipulation which had already been signed by E. Delafield Smith as attorney for plaintiffs in a large number of cases; and unless he did sign it, his cases would be obstructed and fought inch by inch.

That the subsequent compromise, by which plaintiffs agreed to waive payment in coin upon condition that the Government would go on and pay these cases, emanated from witness as attorney for plaintiffs in the cases which he represented.

179 That he did not know that there was, some time prior to the making of the compromise spoken of by him as made in 1874, an announcement by Government officials that the Government proposed to take some of these charges and commissions cases to the Supreme Court for the purpose of reviewing certain questions involved therein.

That he knew nothing about the correspondence which took place between Mr. Bliss and the Department between May and July, 1874, until after the receipt by Colonel Bliss of the Secretary's letter of July 1 suggesting this compromise. That he thought that the two compromises spoken of by him in his testimony were all the compromises of any consequence that were made; and he used the word compromise there in the sense of concession. So far as witness's cases were concerned the district attorney simply sat down on them and would do nothing, and did do nothing for two months or more. That if he had desired he could have gone on before the referee in any one of his cases in precisely the way this case had been going on for two years or more. That he had no definite recollection that he had made any attempt to go on before the ref-

eree in any of these cases during the time the district attorney sat down on them, but that he had no doubt he was diligent in pushing his cases before the referee during that time.

That if there were any questions not covered by the compromise that either party wished to litigate or which had not already been the
180 subject of judicial decision, he supposed either party had a right to litigate them. That under the compromises and the decisions of the courts in similar cases which, by the order of reference, was made the basis of adjustment of these cases, it left to the referee the task of computing the amount due the plaintiffs in any given case, according to that basis.

That he did not understand that these compromises did away with all proof of facts before the referee in these cases. That so far as the questions of fact, if any, were concerned, the trial of such questions before the referee was as necessary after these compromises as before they were made. That he did not know of his own knowledge whether General Regulations No. 63, dated February 1, 1856, and offered by him in evidence, was within a very short time after that date amended. He had been informed that some time afterwards a printed slip was issued from the Treasury Department purporting to amend some phraseology in the Regulations, and still later another printed slip. He did not think he ever saw three copies of General Regulations No. 63 which had these printed slips or amendments in them, nor did he ever see three copies of the amendments in or out of the volume known as General Regulations No. 63. That he could not answer without examination of his register whether all of the cases mentioned on pages from 133 to the middle of 142, inclusive, of Executive Document
181 No. 27 of 45th Congress, second session, House of Representatives, were commenced at his instance or at the instance of Mr. Douglas, whom he had mentioned in his testimony. He thought he might say that some of these cases mentioned on those pages were commenced by others beside Douglas and himself.

He thought William Allan Butler, of Barney, Butler & Parsons, was the attorney of record in cases in which Alfred Douglas had no interest.

Witness represented a large portion of charges and commissions cases mentioned in these pages, and he understood that Mr. Alfred Douglas, jr., represented as attorney in fact a very large majority of the balance of these cases. That as to his own cases, the statements therein as to dates on those pages mentioned were substantially correct. He presumed the cases mentioned on pages 133 to 142 were adjusted within a few months prior to the dates specified therein as having been forwarded to Washington. It was a rule to transmit the statements soon after their adjustment, but there were some lamentable exceptions; however, there were not many.

This witness, on redirect examination, testified, that a subpœna duces tecum was served upon the collector about March, 1863, in the case of Renauld vs. Redfield, requesting him to produce before the deputy clerk of the court, as referee, the entries and invoices of Renauld & Francois and Renauld, Francois & Company, covered by their bill of particulars, but only a few entries and invoices of a date prior to June 1, 1855,
182 were produced; that the witness made personal application and inquiries of the auditor and the record clerk in the custom-house for the missing entries; that the latter represented to him from time to time that

he had made diligent search for them; that they had been taken from the files of the vessels and no trace of them could be found in the custom-house.

That judgment was finally entered in the case of Renauld vs. Redfield upon the adjustment made by the referee of such entries as could be found and were produced from the custom-house, and that judgment, which was entered therein February 17, 1864, was paid on April 7, 1864. That within a few days after such payment all the missing entries were found locked up in a closet in the record room of the custom-house, and immediately thereafter a verdict was taken in this suit of Bartels vs. Redfield, which was commenced about November 15, 1863, for the recovery of the money due the plaintiffs for overpaid duties on the missing entries, and also sums remaining due on other entries which had been incorrectly adjusted in the action of Renauld vs. Redfield.

The witness on re-cross examination testified:

That he thought there were a few other entries in the bill of particulars in this action now before the referee than those entries which he had just styled as missing entries, and the other entries in the bill of particulars in the case of Renauld vs. Redfield; that he could not tell how many
183 more without comparing the two bills of particulars.

The plaintiffs then produced as a witness in their behalf Edward Jordan, who, being duly sworn, testified: That in 1874 he was practicing law in the city of New York; that he had something to do with bringing about the understanding which was finally reached with reference to the adjustment and payment of the so-called charges and commissions cases; that between May and August, 1874, he was acting by direct employment from Alfred Douglas, jr.; that he was employed by him to go to Washington, and did go there to make an argument before the Attorney-General against the policy of further contesting the questions which had arisen in reference to these cases. The Attorney-General had refered the matter to the Solicitor-General, and witness made the argument before him, and was fortunate enough to convince him that further controversy was not advisable on the part of the Government, unless it might be upon one point which was as to the availability of a protest made to one collector with regard to importations made under a subsequent collector.

Plaintiffs, by their counsel, then read to the witness the letter of the Solicitor of the Treasury to George Bliss, U. S. attorney, dated December 21, 1875, as follows:

"In my letter to you of May 11, 1875, directing you to have the order of the court referring these cases to a referee vacated, I stated that
184 the Secretary, when he decided not to take an appeal to the Supreme Court, understood that the amount in the cases unpaid was not large. He now states distinctly that it was represented to him by the counsel for the claimants that there was but a remnant left, and he understood that this remnant had passed into judgment. He had no idea that a large number had not even been sent to the referee, involving, if paid, an amount exceeding a half a million dollars."

And after such reading in answer to the question of the plaintiffs the witness testified that he never made any such representation to the Secretary or the Solicitor of the Treasury or any one connected with those offices.

The witness on cross-examination testified:

That about April 21, 1864, he was the Solicitor of the Treasury of the United States, and was such Solicitor about eight years. His impression now was that his first retainer in connection with the charges and commissions cases, including all the cases of Mr. Douglas, was about the time to which he had alluded, to wit, May and August, 1874. That retainer continued only so long as the performance of that duty lasted; it ended with his argument at Washington. He had a subsequent retainer, he thought, in February and March, 1875; it continued only for a trip to Washington. He had a subsequent retainer, he did not now remember the date, but it could be fixed by reference to the appointment
185 of Mr. Morrill as Secretary of the Treasury about July or August, 1876. He had a subsequent retainer about the 1st of August, 1880. His retainer which carried him to Washington covered an effort to induce the Government not to appeal these cases to the Supreme Court. He went to Washington to make an argument before the Department of Justice to induce the Attorney-General to make such a reply to a letter of the Secretary of the Treasury asking the opinion of the Attorney-General as to the advisability of adopting the suggestions of Mr. George Bliss, U. S. attorney for the southern district of New York, as would result in the abstinence of the Government from a further contest of the questions involved in the cases. That he represented the plaintiffs in these cases and did not represent the Government, but the agitation of the subject began with a letter from U. S. Attorney Bliss to the Secretary of the Treasury urging more or further and more strenuous litigation. That his recollection was that in the course of the argument he made before Solicitor-General Phillips he suggested that perhaps the plaintiffs might be willing to waive their claims as to the availability of the protests made to one collector as to exactions made upon importations under a subsequent collector, and in consequence Solicitor-General Phillips in his reply to the Secretary of the Treasury recommended that if the plaintiffs would waive that point no further litigation would be had.

That U. S. Attorney Bliss had urged upon the Secretary of the
186 Treasury the further litigation of questions arising in the charges and commissions cases, and the plaintiffs sought to avoid their further litigation. The witness was employed at the time he had spoken of to prevent if possible their further litigation. That he thought it was over stating the matter to say that the compromise then brought about as a result of his labor was brought about at the instance of and for the plaintiffs solely. That he would state it this way, that he thought the compromise originated with Solicitor-General Phillips, as I have stated. In a sense and to the extent of which he had stated it was brought about as the result of his labors.

The witness being asked if, as a result of his labors, he had prevented the further litigation of all these questions, testified: That he could only answer that by saying that he supposed if he had not gone to Washington and made the argument or some one else made a similar one the compromise would not have been made.

That he could not say that he had succeeded in persuading the Treasury Department to give up the further contest of the questions in these cases, except upon one matter. That he could only repeat that he had convinced

the Solicitor-General that it was not advisable to further litigate these questions except one. That he had no recollection that after he so convinced the Solicitor-General any statement was ever made to him by any Government official, that these cases outside of the questions to
187 which he had referred were not to be litigated in court should other questions arise in them.

That as to whether they would or would not be litigated would depend upon the opinion of the Government as to the advisability of such litigation. He supposed they would be if it was deemed advisable to do so on the part of the Government. That there was nothing said upon that subject one way or the other when he saw Solicitor-General Phillips.

The witness on re-direct examination testified:

That he thought he went to Washington solely upon the retainer of Mr. Douglas. That he had no reason to suppose that the plaintiffs' counsel in this case, Mr. A. W. Griswold, knew that he was going upon that business. That he did not then propose or agree to any compromise in charges and commissions cases other then those represented by Mr. Douglas.

The plaintiffs then rested.

The defendants then called as a witness in their behalf John V. Vanarsdale, heretofore sworn in this case, who testified: That it was part of his duties as a clerk in the custom-house to get up entries, invoices, and other official documents on file in the custom-house in the custody of the collector of customs in obedience to subpœnas duces tecum served upon the collector. The collector has nothing to do with the naval office which
188 had copies of such entries but not of the invoices. That the collector did not, as a rule, furnish the naval office copies of entries unless specially called for.

If a party came to witness and spoke about entries he should get up the collector's entries and not the naval office entries, and in obedience to a subpœna duces tecum he would get up the collector's entries.

The witness on cross-examination testified:

That the collector was supposed to have control of the entries and invoices on file at the custom-house; but when a subpœna duces tecum was served it was referred to the 7th division of the custom-house, with which division the witness was connected.

The witness had been in the custom-house twenty or twenty-one years. The record room twenty years ago was, he thought, under the control of Mr. Hanscom, a deputy collector. That in 1864 it required the check of the auditor of the custom-house to take papers from the record room thereof if the papers were going to the auditor's department; if the papers were going to another department that department would have to check and give a receipt therefor.

The defendants then produced as a witness in their behalf Michael Carey, who, being duly sworn, testified: That he was in charge of the records and files in the naval office of the New York custom-house, and had been in such charge twenty-nine years the first of last February.
189 That he had heard the last witness speak of naval office entries. That the naval office entry is a duplicate of the collector's entry, except the oath, and except the check of the cashier and the date of payment. And such was the case with naval office entries up to about seven

years ago, and during that time and since the naval office had had a stamp with which the date of payment of duties in the case of merchandise mentioned therein was stamped on the withdrawal entry, and he thought the date of payment of duties was also stamped on the consumption entries. That for every collector's entry there was a naval office copy thereof or entry; and that such had been the custom as long as he could remember, and he thought, ever since the custom-house was started. That there were consumption entries in the files of the naval office back to 1852 in file cases; now in use; and warehouse entries as far back as 1850, and withdrawal entries back to the same time also. That from that time down to the present time these entries have been made and filed as duplicates of the collector's entries, and are, as he believed, on file now.

The witness on cross-examination testified in answer to the question whether protests were attached to or written on naval office entries said: No, he had never seen but one naval office entry to which a copy of the protest was attached, and that one appeared by mistake on such entry.

190 The witness was then asked on redirect examination the following question:

"Q. If the collector's entry and the naval office entry can not be found is it possible to determine the exact amount of the duty paid on merchandise mentioned in these entries?"

To this question the plaintiffs, by their counsel, objected on the ground that it was wholly irrelevant and immaterial to any issue before the referee.

The referee sustained this objection, and to this ruling the defendants by their counsel excepted, which exception was duly noted and allowed.

The defendants, by their counsel, then produced as a witness in their behalf Nathaniel George, heretofore sworn in this case, who testified:

That he had been familiar with the so-called collector's entries in the custom-house during his official connection with the naval office, also the invoices and the so-called naval office entries. That he understood by a naval office entry a copy or duplicate of the collector's entry with some exceptions. That the naval office entry had not a cashier's check of payment, or the oath of the importer, consignee, or agent. That with these exceptions he thought the naval office entry was a duplicate of the collector's entry.

That in adjusting charges and commissions cases he sometimes made use of the naval office entry. That in making up charges and com-

191 missions cases, if he had most of the collector's entries and invoices, he could, in a majority of cases, tell what charges and commissions to take off with a naval office copy alone. That he had seen the entries and invoices in this case (now before the referee) and had examined some of them. That if he had all the collector's entries and invoices with a few exceptions, he could make those exceptions up from the naval office entry, and he could do the same in this case. That if there were fifty collector's entries and invoices missing in a charges and commissions case he thought he could then make an adjustment of the amount of duties to be refunded in the case of such fifty missing entries from the naval office entries, if he had the other collector's entries with their invoices in such a case.

The witness on cross-examination testified:

That there were other differences between the collector's entry and the naval office entry of imported merchandise than he had stated. That any changes in classification of goods for duty might be noted on the collector's entry, but not on the naval office copy thereof. That any amendment made to the entry would be noted on the collector's entry, but not necessarily on the naval office copy. That he could not recall any other difference at that moment.

In answer to a question by plaintiffs' counsel he said, "If a protest was made upon or attached to the collector's entry against the rate or amount of duty exacted, a similar protest or any indication that one had
192 been made would not be found upon the naval office copy." He was then asked, "How could you correctly adjust the amount of duties upon charges and commissions on a naval office copy, if the rate of duty had been changed after the entry or an amendment of the entry had been made, and no indications of those changes or amendments appeared on the naval office copy, as you have stated they might and would not appear?" Answer. In that case he could not correctly make up the amount of duty to be refunded from a naval office copy; that he would refund at the rates named in the naval office copy.

The defendants, by their counsel, then offered in evidence the following papers in the case of P. A. H. Renauld et al. vs. Heman J. Redfield, summons; notice of appearance; writ of certiorari; declaration; plea; verdict; bill of particulars; report of the referee; judgment roll; satisfaction piece.

To the admission in evidence of these papers, and each of them, the plaintiffs, by their counsel, objected on the ground that the same were impertinent, irrelevant, and immaterial.

The defendants, by their counsel, then stated that they offered these papers in evidence to show that the entries, or some of the entries, sought to be made the subject of recovery in this case now before the referee, were the subject of recovery in the case of P. A. H. Renauld et al. vs. Heman J. Redfield, and that as to such entries the plaintiffs had
193 had their day in court; and that if they did not in such case recover anything thereon, or if they had not recovered thereon all that they now claim they should have recovered, the failure to so recover was due to their own negligence.

To the admission in evidence of these papers, the plaintiffs, by their counsel, then further objected that the same, or a part of them, were offered on the original reference in this case and excluded by the referee, to which exclusion exceptions were taken, and on hearing by the court such exceptions were overruled, and that for the purposes for which this case was remanded to the referee the papers offered were wholly immaterial and irrelevant.

The referee sustained these objections, and to this ruling the defendants, by their counsel, excepted; which exception was duly noted and allowed.

The referee then marked these papers for identification, and copies thereof are hereto annexed, marked Defendants' Exhibits, Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, for identification, Apr. 1, 1885. J. M. D.

The defendants, by their counsel, then offered in evidence the bill of

particulars in the said case of P. A. H. Renauld et al. vs. Heman J. Redfield, for the same purpose for which they had offered all the foregoing papers.

To the admission in evidence of this bill of particulars, the plaintiffs, by their counsel, made the same objections as they had made to the admission in evidence of all the above mentioned papers.

194 The referee sustained this objection, and to this ruling the defendants, by their counsel, excepted; which exception was duly noted and allowed.

The defendants, by their counsel, then offered in evidence from and including pages 138 to and including the middle of page 142 to the word "summary" of Executive Document No. 27, 45th Congress, second session, House of Representatives.

The same were duly admitted in evidence, and a copy thereof is hereto annexed, marked Defendant's Exhibit No. 1, March 30, 1885, J. M. D.

The defendants, by their counsel, also offered in evidence as an amendment, or errata (issued April 16, 1856) to General Regulations No. 63, issued February 1, 1856, of which pages 21, 22 and 23 plaintiffs had offered in evidence.

This amendment was duly admitted in evidence and a copy thereof is hereto annexed, marked Defendant's Exhibit No. 2, March 30, 1885, J. M. D.

The defendants then produced as a witness in their behalf Thomas Greenwood, who, being duly sworn, testified: That from about 1878 to about 1882, during which time General N. M. Curtis was such special agent as had been testified to by the witness Almon W. Griswold, about ninety-nine of these charges and commissions cases were examined and adjusted by said Curtis and paid by the Government. That some three hundred and eighty other charges and commissions cases were also

195 examined by said Curtis; and the plaintiffs' attorney therein, Mr. Jordan, being satisfied that nothing was recoverable therein, a portion of such cases were discontinued without costs, and the others dismissed for want of prosecution.

The plaintiffs, by their counsel, moved to strike out the testimony of the witness Greenwood, on the ground that it was irrelevant and immaterial.

The referee granted this motion, and to this ruling the defendants, by their counsel, excepted; which exception was duly noted and allowed.

The defendants then rested.

The plaintiffs then called in rebuttal as a witness in their behalf John V. Vanarsdale, heretofore sworn in this case, who testified: That a naval office entry as made twenty years ago was a copy of the collector's entry in some respects. That it contained the marks and numbers of the merchandise mentioned therein, the date of importation, the name of the importer thereof, the name of the vessel in which the same was imported and the amount of the duty paid thereon; but that it did not have the cashier's check of the collector's office upon it, and he believed it did not have the owner's oath thereon. That the significance of the cashier's check was that duties have been paid and the date of the payment thereof.

196 That if there was a protest attached to the collector's entry he did not think that a copy of such protest would appear on the naval office entry. That he had never noticed any on a naval office copy.

This witness on cross-examination testified:

That, as a matter of fact, it was true that the only difference between the collector's entry and the naval office entry was that on the collector's entry there was the oath of the owner and the check of the cashier, which he had described.

This witness on redirect examination testified:

That he thought on the collector's entry there was a stamp of the liquidation of duties exacted in case of merchandise mentioned therein which did not appear on the naval office entry.

That if goods were consigned to order, a bill of lading should be presented at the custom-house when an entry of the goods mentioned in such bill was made, and then it became one of the records of the custom-house. That he had seen many bills of lading that were not attached to entries, and he had seen a great many that were attached to entries.

This witness on recross-examination testified:

That the date of liquidation of duties exacted in case of merchandise mentioned therein appeared upon the naval office copy thereof.

Both parties then rested.

197 This cause was then summed up before the referee by counsel for the respective parties, each of whom submitted to the referee a series of a "request to find as conclusions of law" on the question of laches as based on the evidence. And to each set of these several requests the referee noted his decision or finding by saying, "I so find, J. M. D.," or, "I do not so find, J. M. D."

The following are the plaintiffs' request on the question of laches, with the referee's findings thereon:

198 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
against
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &C. } O. S. 1596.

Plaintiffs request the referee to find as preliminary facts.

"A." A suit was commenced by Renauld, Francois & Co. vs. H. J. Redfield, collector, about October 20, 1860, to recover excess of duty paid on charges and commissions covering the period from November 1, 1853, to July 1st, 1857, and a verdict taken for the plaintiffs, with a reference to the clerk of the court to adjust the amount due the plaintiffs.

I so find. J. M. D.

"B." About March, 1863, a subpœna duces tecum was served on the collector of customs to produce from the custom-house the invoices and entries called for in plaintiffs' bill of particulars in that case before the referee, but only a very few of them of a date prior to June 1, 1855, were produced; and though personal application was made to the auditor of the customs, and search made by the chief clerk of the record room for these missing entries and invoices, they could not be found in the
199 custom-house, and judgment was finally entered on February 17, 1864, for the amount found due on the entries that were produced, and the judgment was finally paid April 7th, 1864.

I so find. J. M. D.

"C." Within a few days after that judgment was paid all those missing entries were found locked up in a closet in the record room of the custom-house, and on April 21, 1864, a verdict was taken for the plaintiffs in this action entitled Bartels et al. vs. Redfield, which had been commenced November 15th, 1863, the plaintiffs being the same as in the above action of Renauld et al. vs. Redfield.

I so find. J. M. D.

Plaintiffs further request the referee to find as facts:

First. That this action was commenced by Kaufmann, Frank & Wilcoxson, attorneys for plaintiffs, in the state court, on November 15th, 1863, and subsequently removed into the U. S. circuit court.

I so find. J. M. D.

Second. On April 21st, 1864, a verdict by consent was taken for plaintiffs for excess of duty on charges and commissions in this and 66 other cases, with a reference to the clerk of the court to adjust the amount due plaintiffs according to the terms of the verdict.

I so find. J. M. D.

200 Third. On March 16th, 1865, the order of reference to the clerk, contained in the verdict, was revoked by an order entered by the court on its own motion.

I so find. J. M. D.

Fourth. On July 1st, 1865, Judge Nelson made an order at Coopers-town, referring all cases, in which Kaufmann, Frank & Wilcoxson were plaintiff's attorneys, to the collector of the port, and by virtue of that order this case, with all others commenced by that firm of attorneys, stood referred to the collector of customs.

I so find. J. M. D.

Fifth. Between January, 1860, and November 30th, 1863, verdicts had been taken in 300 charges and commissions cases with the usual reference to the clerk of the court for adjustment.

1864.									
Jany.	6	verdicts	were	taken	in	21	more	such	cases.
Feby.	26	"	"	"	"	22	"	"	"
Mch.	14	"	"	"	"	1	"	"	"
Apl.	19	"	"	"	"	96	"	"	"
"	21	"	"	"	"	67	"	"	"
May	27	"	"	"	"	37	"	"	"

Making in all 544 cases; and among those taken April 21st, 1864, was this case of Bartels et al. vs. Redfield (see Exhibit L), all of which verdicts were referred to the clerk for adjustment.

I so find. J. M. D.

201 Sixth. Of these 544 verdicts, which had been taken at various dates—between January, 1860, and May 27, 1864—there remained unadjusted on July 1st, 1865, 269. And of these, 180, by operation of the order of Judge Nelson of that date, were referred to the collector of the port for adjustment.

I so find. J. M. D.

Seventh. Shortly after the order of July 1st, 1865, was made, referring the cases to the collector for adjustment, and prior to December 28th, 1865, certain Government officers claimed that the charges and commissions

cases, in which verdicts had been taken and subsequently referred to the collector, had not been skillfully defended by the U. S. attorney, and insisted that the question should be tried again; and, notwithstanding the U. S. attorney in a letter of December 28th, 1865, requested the collector to go on and adjust certain cases mentioned therein, he failed to do it, and only one case out of 180, which stood referred to him, was adjusted during the four years between December 28, 1865, and January 1st, 1870.

I so find. J. M. D.

Eighth. The Government insisted on the trial of another charges and commissions case, and the case of Hutton vs. Schell was selected for the purpose and tried in December, 1866, and a verdict rendered for the plaintiffs.

I so find. J. M. D.

202 Ninth. The Government of Washington was dissatisfied with the result of this trial, and sent on from the Treasury Department one Simon Towle, who, in conjunction with the U. S. attorney, proposed to the plaintiff in that case if he would consent that the verdict be set aside and a new trial had the Government would surely acquiesce in the result of such second trial, and this proposition was assented to by the plaintiff in that case.

I so find. J. M. D.

Tenth. The verdict was set aside and a second trial had in March, 1868, when a verdict was again rendered for the plaintiff; a report of this trial is in 6th Blatchford, 48.

I so find. J. M. D.

Eleventh. A new administration, with a new U. S. attorney, in March, 1869, ignored the arrangement which had been made in relation to the second trial of the Hutton case, and further litigation ensued; new questions were raised and disposed of by the court. (See Greenleaf v. Schell, 6 Blatch., 225; Tomes v. Redfield, 7 Blatch., 139. The latter case was decided early in 1870.)

I so find. J. M. D.

203 Twelfth. During the year 1870 the collector resumed work and adjusted 23 of the cases which had been referred to him on July 1st, 1865.

I so find. J. M. D.

Thirteenth. On December 28th, 1870, 100 more verdicts were taken on consent of Noah Davis, U. S. attorney, and the cases referred to the collector of the port for adjustment. So that on January 1st, 1871, there were 240 verdicts standing referred to the collector, 140 of them being verdicts which had been referred to him by the order of July 1st, 1865, showing that in 5½ years, from July, 1865, to January, 1871, the collector had adjusted 40 cases, as follows:

Between July 1, '65,	&	Dec. 28, same year,		15 cases.
" Dec. 28, '65,	"	Jan. 1, '70,		1 case.
" Jan. 1, '70,	"	Jan. 1, '71,		23 cases.

Leaving on the latter date 240 cases unadjusted.

I so find. J. M. D.

Fourteenth. About February, 1871, the Treasury Department proposed to the plaintiffs in the charges and commissions cases that all such cases in which verdicts had not already been entered should be referred

to the Hon. Edwards Pierrepont for adjustment in accordance with the decisions of the courts, and between April, 1871, and August 13, 1872, 233 such cases were referred to him, and the order of reference provided that the referee give notice of the time and place of hearing before him, and the Solicitor of the Treasury intimated to the referee that
204 the collector of customs would furnish from the custom-house clerical force to make the computations in the cases before the referee.

I so find. J. M. D.

Fifteenth. The collector, pursuant to request of Solicitor of Treasury, detailed certain custom-house clerks, who were willing to work out of custom-house office hours on the cases referred to Pierrepont at the latter's office, their services to be paid for by plaintiffs in the cases.

I so find. J. M. D.

Sixteenth. Between April, 1871, and the spring of 1874, Judge Pierrepont, with the aid of such clerks as the collector was able to furnish, adjusted about 126 of the 233 cases which had been referred to him, leaving 105 unadjusted at the time of his appointment as attorney-general of the U. S., when he ceased acting as referee.

I so find. J. M. D.

Seventeenth. Between January 1, 1871, and January 1, 1878, seven years, the collector of customs adjusted only 29 of the 140 cases which were referred to him under the order of July 1, 1865, assigning as a reason that he had not the clerical force to do it, and that the Secretary of the Treasury declined to furnish more.

I so find. J. M. D.

205 Eighteenth. That in May, 1874, a new controversy arose about these cases. Mr. Bliss, the U. S. attorney, recommended taking them to the U. S. Supreme Court, negotiations followed and resulted in a stipulation being made not to appeal on condition that plaintiffs abandon all claim to recover under prospective protest made to a prior collector. (See Exhibit Z.)

I so find. J. M. D.

Nineteenth. This stipulation was repudiated by the Government in May, 1875, and between that date and November, 1876, no cases were adjusted by the collector or the referee.

I so find. J. M. D.

Twentieth. About 1876, the plaintiffs' attorney, in order to have this case adjusted, employed, with the consent of the collector of customs, one Alvin Rose, a Government clerk in the auditor's department of the custom-house, to adjust this case, and from about May, 1875, to March, 1877, he was engaged on it, and nearly completed, but did not quite finish the adjustment of it.

I so find. J. M. D.

Twenty-first. After waiting two years, from the spring of 1875, when Rose commenced work on it, up to March 7, 1877, to have this case adjusted, but without success, on the latter date plaintiffs applied to
206 the court and obtained an order opening the judgment which they had obtained in the prior action of Renauld, Francois & Co. vs. Redfield, and had it referred to the clerk of this court for adjustment.

I so find. J. M. D.

Twenty-second. From March, 1877, to the present time, 1st, the suit of Renauld, Francois & Co. vs. Redfield, and then, 2d, this case of Bartels vs. Redfield, have been in active prosecution, both before the courts and referees, as follows, viz:

I so find. J. M. D.

March 7th, 1877. Judgment in Renauld vs. Redfield opened, on plaintiffs' motion, and case referred to Davenport for adjustment.

I so find. J. M. D.

July 22nd, 1877. Redfield died, and proceedings in the case were suspended till executors qualified.

I so find. J. M. D.

May 3d, 1878. Redfield's executors qualified.

May 20th, 1878. District attorney made motion to vacate the order of Judge Blatchford of March 7, 1877.

Sept. 7th, 1878. Judge Blatchford denied defendants' motion to vacate order of March 7, 1877.

Sept. 11th, 1878. Redfield's executors were substituted as defendants in lieu of H. J. Redfield, deceased.

207 Oct. 3, 1878. Defendants noticed for settlement a proposed bill of exceptions to the decision of the court denying their motion to vacate order of March 7, 1877.

I so find. J. M. D.

Twenty-third. Oct. Term U. S. Sup. Court, 1878. Writs of error were sued out by the U. S. district attorney in 32 charges and commissions cases, and meanwhile all proceedings in the adjustment of such cases at the custom-house here were suspended, and Gen'l N. M. Curtis, a special agent, began investigations, etc.

I so find. J. M. D.

Twenty-fourth. And meanwhile the entries and invoices in the case of Renauld, Francois & Co. vs. Redfield, which had been brought before the referee in 1877, had been, with the exception of three or four entries and invoices, taken away from him by Gen'l Curtis.

I so find. J. M. D.

Gen'l Curtis was then appealed to to adjust this case, but declined, though in August and September, 1881, he or the collector did adjust a large number of cases, verdicts in which were taken at the same time as in this case and referred to the collector under the same order of July 1st, 1865.

I so find. J. M. D.

In 1882 this case was transferred from the collector as referee to

208 J. M. Deuel, esq., for adjustment, and has been vigorously prosecuted ever since.

I so find. J. M. D.

Twenty-fiifth. The collector of customs had the custody and control of all the papers, invoices, and entries in this case of Bartels et al. vs. Redfield from July 1, 1865, the date of the reference to him, and could have adjusted it nineteen years ago, or at any time since had he so chosen, and as referee, appointed by the court, it was his duty to have done so.

I so find. J. M. D.

Twenty-sixth. The Secretary of the Treasury in a report to the House of Representatives, 45th Congress, 2nd session, Ex. Doc. No. 27, page 19,

transmits a report of the Assistant Secretary upon these cases, wherein it is stated that "The delay may be more properly accounted for by the "changes in the district attorney's office, and the changes of officers and "policy in the Treasury Department," and the evidence fully substantiates that declaration.

I so find. J. M. D.

As a conclusion of law.

That the plaintiffs have not been guilty of laches, but have used reasonable diligence in the prosecution of this action and are entitled to interest on the amount of principal found due by the referee from the several dates of payment.

I so find. J. M. D.

MARSH, WILSON & WALLIS,
Pl'ff's Att'ys.
A. W. GRISWOLD,
Of Counsel.

209 And the following are the defendants' requests with the referee's findings thereon:

U. S. circuit court, southern district of New York.

G. F. W. BARTELS, P. A. RENAULD, AND E. E. Francois,
vs.
CONSTANCE C. REDFIELD, EXCR. ET AL. EXCRS. of Heman J. Redfield, deceased.
} O. S. 1596.

Defendants' requests to find:

As to the question of laches under the decision of Redfield, et al., vs. Vstalyfera Iron Company (110 U. S. reports, p. 174.)

The defendants requests the referee herein to find as

Conclusions of fact.

1st. That the plaintiffs in this action about October 20th, 1860, commenced against Heman J. Redfield, the testator of the defendants therein, the late Heman J. Redfield, in the superior court of the city of New York, another and prior action to this action, known by the title of P. A. H. Renauld, et al., vs. H. J. Redfield, to recover excessive duties paid to said Refield as collector of customs on charges and commissions in the
210 case of importations made by the plaintiffs, or some of them, from a foreign country or countries into the United States.

I so find. J. M. D.

2nd. That these plaintiffs recovered in said other and prior action a verdict for excessive duties paid on said commissions on or about May 3rd, 1861.

I so find. J. M. D.

3rd. That these plaintiffs recovered in said other and prior action a judgment on said verdict on or about May 30th, 1863.

I so find. J. M. D.

4th. That said judgment and verdict in said other and prior action were both vacated and set aside on or about January 11th, 1864.

I so find. J. M. D.

5th. That said other and prior action was again tried and a verdict rendered therein for these plaintiffs for excessive duties exacted on said charges and commissions on or about January 11th, 1864.

I so find. J. M. D.

6th. That said other and prior action was referred for adjustment under said last-mentioned verdict to the clerk of this court or his deputy.

I so find. J. M. D.

7th. That thereafter and on or about February 16, 1864, the deputy clerk of this court adjusted said other and prior action and made his report of such adjustment.

I so find. J. M. D.

211 8th. That on the same day as last mentioned, viz, on or about February 17th, 1864, judgment was entered in said other and prior action in favor of these plaintiffs and against the aforesaid H. J. Redfield, the testator of the defendants in this, the above-entitled action.

I so find. J. M. D.

9th. That said judgment in said other and prior action was duly paid on or about April 7th, 1864.

I so find. J. M. D.

10th. That thereafter and on or about March 7th, 1877, said judgment, recovered February 17th, 1864, in said other and prior action, on the motion of these plaintiffs, was opened by order of this court, and said other and prior action was referred to John I. Davenport, esq., as referee, to re-adjust the same according to the terms of the last-mentioned verdict therein.

I so find. J. M. D.

11th. That thereafter and subsequently to the decision of U. S. Supreme Court in the case of Bronson, exr., vs. Schulten, rendered about January, 1882, and reported at page 410 of Volume 104, U. S. Reports, the order opening the judgment of February 17th, 1864, in said other and prior action, was vacated by the order of the court.

I so find. J. M. D.

12th. That these plaintiffs, after the commencement of said other
212 and prior action, and on or about November 15th, 1863, by Messrs. Kaufmann, Frank & Wilcoxson, their attorneys, commenced in the supreme court of this State in and for the city and county of New York, this, the above-entitled action against the aforesaid Heman J. Redfield, the testator of said defendants, to recover the sum of fifteen hundred dollars paid as excessive duties on charges and commissions in the case of importations made by these plaintiffs from a foreign country or countries into the United States.

I so find. J. M. D.

13th. That thereafter the late E. Delafield Smith appeared in this action as attorney for the then defendant therein, the aforesaid Heman J. Redfield.

I so find. J. M. D.

14th. That this action was duly removed by certiorari from said supreme court into this court on or about February 20th, 1864.

I so find. J. M. D.

15th. That thereafter these plaintiffs filed and served in this action a common law declaration alleging indebtedness as existing November 14th, 1863, for money had and received.

I so find. J. M. D.

16th. That thereafter the then defendant, the aforesaid Heman J. Redfield, filed and served in this action a plea alleging non assumpsit.

I so find. J. M. D.

213 17th. That thereafter and on or about April 21st, 1864, these plaintiffs recovered a verdict for excessive duties paid on said charges and commissions and embraced in their bill of particulars and not barred by the statute of limitation.

I so find. J. M. D.

18th. That by the terms of the verdict therein this action was referred for adjustment pursuant to said verdict to the clerk of this court or his deputy.

I so find. J. M. D.

19th. That thereafter and on or about March 16th, 1865, the order of that part of the verdict in this action referring the same to the clerk of this court or his deputy as referred for adjustment was by order of this court revoked.

I so find. J. M. D.

20th. That thereafter and on or about July 1st, 1865, this action was referred for adjustment pursuant to the verdict therein to the collector of the port.

I so find. J. M. D.

21st. That thereafter and on or about 1866, the aforesaid E. Delafield Smith was substituted as attorney for the plaintiffs in this action in the place of said Kaufmann, Frank & Wilcoxson, and he continued to be such attorney until about 1878, when he died.

I so find. J. M. D.

22nd. That on or about November 20th, 1874, these plaintiffs on their motion obtained in this and other actions an order that the referee
214 therein in adjusting any of such actions should not exclude from his report any item or items for the reason that said item or items were paid more than six years before the commencement of suit, unless it should appear that the statute of limitation was duly pleaded by the defendant in such action, and the referee was instructed to include such items in his reports and statements, unless the statute was pleaded.

I so find. J. M. D.

23rd. That thereafter and on or about January 29th, 1880, Messrs. Marsh, Wilson & Wallis were substituted by order of this court as attorneys for these plaintiffs in this action in the place of E. Delafield Smith, deceased.

I so find. J. M. D.

24th. That thereafter and on or about January 8th, 1881, an order was made in this action by this court granting these plaintiffs on their motion leave to amend their summons and complaint in this action by increasing

the damages therein set forth to be twenty thousand dollars and interest from the dates of payment.

I so find. J. M. D.

25th. That thereafter and on or about May 11th, 1882, these plaintiffs served their bill of particulars in this action, giving the names of the vessels by which and the dates on which their aforesaid importations were made.

I so find. J. M. D.

26th. That thereafter and on or about June 30th, 1882, this action was, on motion of these plaintiffs, referred to Joseph M. Deuel, esq., as
215 referee for adjustment according to the verdict therein of the plaintiffs' claim upon their bill of particulars served therein.

I so find. J. M. D.

27th. That on or about September 19th, 1882, the defendants in this action obtained from this court an order to show cause why the verdict in this action should not be vacated and why the defendants should not be allowed to amend their plea in this action by setting up as additional defenses therein the pendency of said other and prior action for the same cause or causes of action, res adjudicata and payment, and why such other and further relief should not be granted as to the court should seem meet and just.

I so find. J. M. D.

28th. That subsequently said order to show cause coming on to be heard, the defendants' motion based thereon for the relief thereby demanded was denied.

I so find. J. M. D.

29th. That on or about November 2, 1882, the hearing of this action was commenced before Joseph M. Deuel, esq., pursuant to the aforesaid order of reference of June 30th, 1882.

I so find. J. M. D.

30th. That the aforesaid, A. W. Griswold, who was the attorney of record for these plaintiffs in said other and prior action, was never the attorney of record for the plaintiffs in this action. That since January 29th, 1880, when the aforesaid Marsh, Wilson & Wallis were sub-
216 stituted as attorneys for the plaintiffs in this action in the place of the said E. Delafield Smith, deceased, the said A. W. Griswold has been of counsel for the plaintiffs in this action.

I so find. J. M. D.

31st. That the bill of particulars in said other and prior action and the bill of particulars in this action each cover the same period of time and are the same with certain exceptions.

I so find. J. M. D.

32nd. That said other and prior action and this action were each brought to recover excessive duties paid to the aforesaid Heman J. Redfield as collector of customs between November 1st, 1853, and July 1st, 1857.

I so find. J. M. D.

33rd. That the entries of plaintiffs' importations specified in the bill of particulars in this action are the same as those specified in the bill of particulars in said other and prior action, with the exceptions of about fifty entries.

I so find. J. M. D.

34th. That within a few days after the payment on April 7th, 1864, of the judgment in said other and prior action the plaintiffs' entries and invoices of their importations embraced in their bill of particulars in this action were at the custom-house in this city.

I so find. J. M. D.

217 35th. That there is no evidence in this action that these plaintiffs, or any one in their behalf, from the rendering of the verdict in this action on April 21st, 1864, until July 1st, 1865, when this action was referred to the collector of the port ever made any application to the clerk of this court or his deputy, to whom the same was referred by the terms of said verdict for adjustment pursuant thereto to have the same so adjusted.

I so find. J. M. D.

36th. That there is no evidence in this action that these plaintiffs or any one in their behalf from July 1st, 1865, until about April or May, 1882, when this action was referred to the present referee, ever made any application to the collector of the port as such referee as aforesaid to have this action so adjusted.

I do not so find. J. M. D.

37th. That there is no evidence in this action that these plaintiffs or any one in their behalf from April 21st, 1864, until somewhere about June 30th, 1882, ever made any application to this court and a judge thereof to have this action adjusted pursuant to the verdict therein.

I so find. J. M. D.

And the referee is requested to find as

Conclusions of law:

1st. That those plaintiffs have been guilty of gross laches in prosecuting this action.

I do not so find. J. M. D.

218 2nd. That those plaintiffs are not entitled to recover any interest whatever in this action.

I do not so find. J. M. D.

Dated New York, April 24th, 1885.

ELIHU ROOT,
U. S. Att'y & att'y for deft.

219 And on June 1st, 1885, the referee made and filed his report herein as follows:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, ET AL.,
against
CONSTANCE C. REDFIELD, EX'R, ETC., ET AL.

By the order entered in the above action on May 16th, 1884, this case was referred back to me to correct the allowance of interest, to exclude from the adjustment of duties paid by plaintiffs upon the items designated in the invoices as "frais jusqu 'a bord," and directing the reception of

such evidence as the parties may present respecting the existence of laches which may affect the right of plaintiffs to recover interest.

The respective parties appeared before me by counsel, the testimony presented was reduced to writing, which, with the exhibits presented and admitted, is herewith returned.

Excluding the duties paid by the plaintiffs upon the items designated on the invoices as "frais jusqu'a bord," I find and report that the
220 plaintiffs are entitled to recover under the verdict, as principal, the sum of fourteen thousand three hundred and ninety-four dollars and ninety-five cents. The interest computed upon this amount from the respective dates of payment to the date of this report amounts in the aggregate to the sum of twenty nine thousand nine hundred and eighty-eight dollars and fifty-five cents.

Upon the question as to whether the plaintiffs are responsible for this long delayed adjustment, a just and equitable conclusion can be reached only by considering this individual case as one of a very large class, all seeking the same object, to wit, the recovery of money illegally exacted with legal damages for its detention. It is to be borne in mind that the contest was not as the title would imply, simply between individuals. Practically it was between the plaintiffs on one side and the Government on the other. The direction and conduct of the defense was in charge of Government officers who shaped every policy touching defense and payment, and the frequent changes of the individuals occupying such offices operated to introduce at different periods diversity of views and opinions, and tended to, and did, prevent uniformity of action, or a continuance for any considerable period of any well defined policy. Government officers were the custodians of documentary evidence necessary to maintain and adjust the cases, and when adjusted and judgment entered, the ordinary means of enforcing payment were not available.

221 From a careful consideration of the evidence before me, I am convinced of the correctness of the conclusion expressed on page 19 of Ex. T. I., that "the delay may be more properly accounted for by the changes in the district attorney's office and the changes of officers and policy in the Treasury Department."

The district attorney lays great stress upon the fact that another suit between the plaintiffs and against the same collector, covering practically the same period of time had been instituted and prosecuted to judgment and payment; that because the amount found due in this case might have been but was not included in that recovery is of itself laches on the part of the plaintiffs affecting their rights to recover interest.

The evidence before me shows that it was through no fault of the plaintiffs that the amounts sought to be recovered here were not included in that action. The collector was the custodian of the papers required to maintain and adjust the claim, and when the adjustment in the former case was made the papers upon which this proceeding rests were not forthcoming, and these papers it is seen established a claim for over fourteen thousand dollars. Soon after the payment in that case the missing entries and invoices were found, and a verdict was entered herein upon consent of the district attorney "for excess of duty with interest thereon." If the omission to include the amount in the former suit had been through
222 any fault or negligence of these plaintiffs it was cured by that ver-

dict. At one time since the verdict the adjustment in this case was nearly concluded, but the work was suspended, and I am unable to find that this suspension was through any fault of the plaintiffs.

I fail to see in the evidence before me any good and substantial grounds for a finding of laches on the part of plaintiffs which ought to deprive them of interest upon the money exacted of them by the Government and detained so long, and I therefore find and report that interest should be included in the judgment.

New York, June 1, 1885.

Respectfully submitted.

J. M. DEUEL, *Referee.*

223 To the report of the referee and his decision therein, the plaintiffs, by their counsel, duly made and filed the following exceptions.

U. S. circuit court, southern district of New York.

GEO. F. W. BARTELS ET AL.
against
CONSTANCE C. REDFIELD ET AL., EXRS., ETC. }). S. 1596.

1st. The plaintiffs except to the decisions of the referee wherein he refused to find—as a conclusion of law—that the plaintiffs were entitled to a report and judgment for $74,483.13, being the amount of $18,642.15 principal, found by said referee, to have been paid by plaintiffs for excess of duty on inland transportation charges and on commissions over 2 per cent. on certain wine imported into New York from Reims, in France via Havre, including the item designated in the invoices as "frais jusqu à bord," being charges incurred in transhipping the wine at Havre, together with interest thereon from the several dates of payment to April 21st, 1864, the date of the verdict, and interest on the amount of the verdict to the date of the report.

224 2nd. The plaintiffs further except to the decision of the referee, wherein he neglected and refused to find as conclusion of law, that the plaintiffs, if not entitled to the above-named sum of $74,483.13, as specified in the first exception, were entitled to a report and judgment for $57,906.77, being the amount of $14,394.95 principal found by the said referee to have been paid by plaintiff for excess of duty on inland transportation charges, and on commissions over 2 per cent. on said wines, including the item designated in said invoices as "frais jusqu à bord," together with interest thereon from the several dates of payment to April 21st, 1864, the date of the verdict, with interest on the amount of the verdict to the date of the report.

3rd. The plaintiffs further except to the decision of the referee wherein he neglected and refused to find, as a conclusion of law, that the plaintiffs, if not entitled to the said sum of $74,483.13, nor to the said sum of $57,906.77, as specified in their first and second exceptions herein, were entitled to a report and judgment for $57,272.01, being the amount of $18,642.15, principal, found by said referee to have been paid by plaintiffs for excess of duty on charges and commissions, on said wines im-

ported from said Reims, via Havre, including the aforesaid item designated in the invoices as "frais jusqu à bord," together with
225 interest thereon from the several dates of payment to the date of the report.

MARSH, WILSON & WALLIS,
Plffs'. Attys.

A. W. GRISWOLD,
of Counsel.

226 To the referee's report and his decisions the defendants duly made and filed the following exceptions, of which the following is a copy thereof:

U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS, ET AL.
against
CONSTANCE C. REDFIELD, EXECUTRIX et al., &c. } O. S. 1596.

Defendants' exceptions to referee's report, dated June 1st, 1885, his finding and refusal to find, also made at or about that date.

First. The defendants except to the referee's refusal to find as requested by them in their 36th request to find as conclusion of fact as to the question of laches, &c., under the decision of Redfield et al. vs. Ystalyfera Iron Company (110 U. S. Repts., p. 174.)

Second. The defendants except to the referee's refusal to find as requested by them in their 1st and 2d requests to find as conclusions of law as to the aforesaid question.

Third. The defendants except to the finding by the referee, of the
227 plaintiffs' requests to find as conclusions of fact marked 1st, 2d, and 3d; of their request to find as preliminary facts marked "B"; of so much of their request to find as conclusion of fact marked "Twenty-second" as finds "that from March, 1877, to the present time, 1st the suit of Renauld, Francois & Co. vs. Redfield, and then, 2d, this case of Bartels vs. Redfield have been in active prosecution both before the courts and referees; of so much of their request to find as conclusion of fact marked "Twenty-fifth" as finds "and as referee appointed by the court it was his duty to have done so;" of their request to find as conclusion of fact marked "Twenty-six;" and of their request to find as conclusion of law as to laches and interest.

Fourth. The defendants except to each and every part of the referee's aforesaid report and in particular to the following portions thereof:

(a) "That the plaintiffs are entitled to recover under the verdict as principal the sum of fourteen thousand three hundred and ninety-four dollars and ninety-five cents."

(b) That "upon the question as to whether the plaintiffs are responsible for the long delayed adjustment a just and equitable conclusion can be reached only by considering this individual case as one of a very large class, all seeking the same object, to wit, the recovery of money illegally exacted with legal damages for its detention."

228 (c) That "Government officers were the custodian of the documentary evidence necessary to maintain and adjust the cases."

(d) That "the delay may be more properly accounted for by the changes in the district attorney's office and the changes of officers and policy in Treasury Department."

(e) That "the evidence before me shows that it was through no fault of the plaintiffs that the amounts sought to be recovered here were not included in that action" (to wit, the former suit between the same parties as the original parties to this action).

(f) That "the collector was the custodian of the papers required to maintain and adjust the claim, and when the adjustment in the former case was made the papers upon which this proceeding rests were not forthwith coming."

(g) That "if the omission to include the amount in the former suit had been through any fault or negligence of these plaintiffs, it was cured by that verdict."

(h) That "I fail to see in the evidence before me any good and substantial grounds for a finding of laches on the part of the plaintiffs which ought to deprive them of interest upon the money exacted of them by the Government and detained so long," so far as this portion is a finding by the referee.

229 (i) That "and I therefore find and report that interest should be included in the judgment."

Dated New York, June 2d, 1885.

ELIHU ROOT,
U. S. Atty. and Atty. for Deft.

Afterwards, to wit, on the 22d day of August, 1885, the plaintiffs by their counsel moved the court to overrule the defendants' and sustain plaintiffs' exceptions to the referee's report of June 1, 1885, &c.

And the defendants, by their counsel, moved the court to overrule the plaintiffs' exceptions to said report and to sustain defendants' said exceptions. And plaintiffs, by their counsel, were heard in behalf of their motion and in opposition to the defendants' motion; and the defendants, by their counsel, were heard in behalf of their motion and in opposition to the plaintiffs' motion.

Afterwards, to wit, on the 17th day of April, 1886, the court duly made and filed in the clerk's office of this court its decision on the aforesaid motion, of which decision the following is a copy:

United States circuit court, southern district of New York.

BARTELS ET AL.
vs.
REDFIELD'S EXORS.

230 WALLACE, J.:

This case comes here upon exceptions filed by the defendant to the report of a referee to whom it was referred to ascertain what sums are due the plaintiffs for excess of duties illegally exacted by the defendant as collector of the port of New York upon the importation by plaintiffs of

certain merchandise. The suit was brought in November, 1863. April 21, 1864, a verdict was entered for the plaintiffs upon a trial before a court and jury, which, as has been considered when this case was here on a former occasion, was in effect a stipulation between the parties that the plaintiffs were entitled to recover judgment for excess of duty on account of certain specified exactions, but the amount was undetermined. April 21, 1864, an order was entered in the case referring it to the clerk of the court or his deputy to ascertain and adjust the amount to which the plaintiffs were entitled under the verdict. Subsequently an order was made by the court vacating the order of reference to the clerk and referring the case, with a large number of similar cases, to the collector of the port for adjustment. Subsequently that order was vacated and the present reference was ordered.

The exceptions raise the question whether the plaintiffs are entitled to recover interest upon the sums illegally exacted by the defendant.

231 The case of Redfield vs. Ystalyfera Iron Company, 110 U. S., 174, is an authority for the proposition that a plaintiff who has brought a suit to recover money wrongfully exacted by him from the defendant can not recover any interest by way of damages, if he has been guilty of laches in unreasonably delaying the prosecution of the suit after he had brought it. The cases of Bann vs. Delzell, 3 Cor. & P., 376; Newell vs. Keith, 11 Vt., 214; Adams Ex. Co. vs. Milton, 11 Bush., 49, are referred to in the opinion of the court as deciding that where interest is recoverable not as part of the contract, but by way of damages, it may be properly withheld if the plaintiff has been guilty of laches in unreasonably delaying the prosecution of his claim. Bann vs. Dalzell was an action at nisi prius of debt on an Irish judgment, in which the original debt would not have carried interest; and the judge left it to the jury to determine whether the plaintiff had taken proper steps to find the defendant, instructions them that if he had they might give him a verdict with such interest as they should deem reasonable. Newell vs. Keith was an action for personal services, and the court held that where no time is agreed upon for the payment of personal services and no charge in fact made for them nor presentment for payment in the life-time of the party, and the claim was permitted to sleep a great length of time from the voluntary act of the plaintiff, no interest should be allowed on such claim, except from

232 the death of the party. Adams Ex. Co. vs. Milton was an action on an unliquidated account for a balance claimed to be due for work and labor; and the court held that interest was not allowable under the rules of pleading because there was no special count for interest.

None of these cases throw any light upon the question here, as in none of them was the point considered respecting the effect of laches subsequent to the bringing of the suit.

The rule adopted in the Redfield case by the Supreme Court has introduced into the present case on issue which is quite foreign to those made up by the pleadings, and relates to transactions covering a period of twenty years, which have taken place since the bringing of the suit. Had the case been tried, as those cases generally are, with a jury, it is quite safe to say that neither of the parties could have been prepared to enter upon such an extended field of inquiry as that to which the voluminous evidence before the referee has been directed.

The delay which has intervened since the consent verdict in the case was entered, a period of over twenty years, is extraordinary.

If the defendant, or rather the Government, which is the real party in interest, has not been mainly responsible for this delay, there would seem to be no just cause on its part to complain of it, because, by the
233 rules of practice, the defendant could have brought the trial of the case to a conclusion at any time, as well as could the plaintiff, or the Government might have asserted its unwillingness to acquiesce in further delay by a motion for judgment, as in case of non-suit. But the referee finds that the delay was not fairly attributable to the plaintiff, but arose mainly from complications incident to the fact that the suit was one of a very large number of similar suits in which questions affecting the defendants' liability were being litigated from time to time with varying results; that any recovery which plaintiffs might have obtained would not have been acquiesced in by the Government, but would have been further litigated; and that his claim was to that extent involved with the trials and results of the other suits that it was reasonable to postpone the trial in prospect of an adjustment which at times seemed to be near at hand, but was constantly deferred by the vacillating action of the officers of the Government. The conclusion of the referee seems to be sustained by the evidence. The exceptions are therefore overruled.

Afterwards, to wit, the court made, and on April 30th, 1886, duly filed, the following order:

234 U. S. circuit court, southern district of New York.

GEORGE F. W. BARTELS ET AL.
vs.
CONSTANCE C. REDFIELD ET AL., EXECUTORS, &c. } O. S. 1596.

This case coming on to be heard on exceptions taken by both plaintiffs and defendants to the report of Joseph M. Deuel, esq., the referee herein, filed June 1st, 1885, and after hearing Almon W. Griswold, esq., of counsel for plaintiffs, in support of plaintiffs' and in opposition to defendants' exceptions to said report, and Thomas Greenwood, esq., assistant U. S. attorney, for defendants, in support of defendants' and in opposition to plaintiffs' exceptions to said report, and due deliberation had, it is ordered:

That both plaintiffs' and defendants' exceptions to the report of the referee are hereby overruled, and said report is in all things confirmed.

And it is further ordered, that interest on the total amount of principal, viz	$14,394.95
And interest found due by the referee, up to June 1st, 1885, the date of his report, viz.....	29,988.55
	44,383.50

235 be computed from that date to the date of entry of judgment and included therein, with costs to be taxed.

Dated New York, April 19th, 1886.

WM. J. WALLACE.

To this order and the decision of the court embodied therein the defendants, by their counsel, duly excepted in so far as the same overruled the defendants' exceptions as to the allowance of interest in this case; which exceptions was duly noted and allowed. And the plaintiffs by their counsel excepted to so much of said decision and order as held that plaintiffs could not recover the excess of duty paid on the item of charges designated in the invoice as "frais jusqu 'a bord," which exception was duly noted and allowed.

And the plaintiffs further excepted to so much of said decision and order as held that plaintiffs are not entitled to interest computed with a rest at the date of the verdict, with interest on the amount of such verdict from its date, April 21st, 1864, which exception was duly noted and allowed.

And inasmuch as the defendants' said exceptions, matters, and things aforesaid would not otherwise appear by the record, therefore, on the prayer of the defendants, by their counsel, I have settled, allowed, and signed this bill of exceptions; and it is ordered that the same be
236 filed nunc pro tunc as a part of the record herein, with like force and effect as if the same had been reduced to writing, signed and filed before the entry of said order of April 19th, 1886.

Dated New York, September 30, 1887.

WM. J. WALLACE.

And inasmuch as the plaintiffs' said exceptions, matters, and things aforesaid would not otherwise appear by the record, therefore, on their prayer by their counsel, I have settled, allowed, and signed this bill of exceptions; and it is ordered that the same be filed nunc pro tunc as a part of the record herein, with like force and effect as if the same had been reduced to writing, signed and filed before the entry of said order of April 19th, 1886.

Dated New York, September 30, 1887.

WM. J. WALLACE.

It is agreed that the foregoing bill of exceptions was presented during the term and with our consent has been held by the court until now.

And it is further agreed that the said bill shall be treated as having been settled and signed during said term.

MARSH, WILSON & WALLIS,
Pl'ffs' Att'ys.

STEPHEN A. WALKER,
Def'ts' Att'ys.

237 PLAINTIFF'S EXHIBITS.

Exhibit A.—J. M. D.

General Regulations, No. 63.

FEBRUARY 1ST, 1856 (page 21–23).

Costs and charges.—The law requires that there shall be added to the "actual market value, or wholesale price" of imports ascertained by the

appraisers, in order to fix their dutiable value, "all costs and charges, except insurance, and including, in every case, a charge for commissions, at the usual rates."

These charges are:

First.—They must include "putting up and packing," together with the value of the sack, package, box, crate, hogshead, barrel, bale, cask, can, bottles, jars, vessels, and demijohns, and coverings of all kinds.

Second.—Commissions must, in every case, be made a dutiable charge at the usual rates, but never less than 2½ per cent., nor less than is stated in the invoice. If it appear on the face of the invoice or entry at less than the usual rate, it must be advanced by the appraisers. Where there is a distinct brokerage, or where brokerage is a usual charge at the place of shipment or purchase, that to be added likewise. Commissions on the amount of shipping charges at the foreign port of exportation constitute one of the charges liable to duty under existing laws and instructions.

Third.—Export duty, as on silks from China, storage at the foreign shipping port, cost of putting cargoes on board ship, including drayage, bill of lading, lighterage, town dues, and shipping charges, dock or wharf dues, and all charges to place the article on ship-board, and fire insurance, if effected for a period prior to the shipment of goods to the United States.

Freight or transportation from the foreign port of shipment to the port of importation is not a dutiable charge. In cases, therefore, of goods arriving in the United States, after having been first transported from
238 the place of their production or manufacture to another port or place, whether in the same or another country, by land or by water, and thence transshipped for the United States—provided satisfactory evidence be adduced to the collector of the customs at the port where the said goods shall arrive, that they were originally shipped with the bona fide intention of having them transported to a port in the United States as their final port of destination—no dutiable costs or charges will have accrued, either on the transportation from the first to the intermediate port, or while remaining in or leaving the latter, the voyage or transportation being regarded as continuous from the country whence originally exported in good faith, on a declared destination for a port or parties in the United States.

In illustration of the rule thus established it may be remarked that the evidence of final destination being satisfactory, no duties would be chargeable in ports of the United States on the freight or transportation or charges in the intermediate ports, on goods originally from China, or Glasgow, or Cardiff, or Londonderry to Liverpool; from Malaga to Valparaiso; from Dresden to Bremen; or from Basle to Havre, on the said goods being transshipped for the United States from the several intermediate ports enumerated.

Exhibit B.—February 14th, 1885.—J. M. D.

TREASURY DEPARTMENT, *October 4th*, 1856.

SIR: On application being made to you by Messrs. A. Iselin & Co., and others, of New York, you are authorized and directed to cause to be prepared the usual certified statements for return of "duty on freight" in such cases where the same is found to have been paid in excess, as decided

by this Department in General Regulations, No. 63, page 22, and
239 under written protest, and transmit same to this Department for its consideration

Very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

H. J. REDFIELD, Esq.,
Collector of Customs, New York.

Exhibit C.—J. M. D.

TREASURY DEPARTMENT, *May 27th*, 1857.

SIR: I am in receipt of your letter of 26th inst. transmitting a report of the U. S. appraisers, in relation to the "usual commissions" charged in China, Norway, Holland, and German ports, and have to state, in reply, that you will cause to be prepared and transmitted to this Department the usual certified statements for a return of the duty exacted in error, in all cases where it is found that the said duty has been on a rate of commission greater than the usual rate chargeable in the above-named countries.

Very respectfully, your obedient servant,

HOWELL COBB,
Secretary of the Treasury.

H. J. REDFIELD, Esq.,
Collector of Customs, New York.

240 Exhibit D.—J. M. D.

TREASURY DEPARTMENT, *May 21st*, 1858.

SIR: I would call your attention to the instructions of the Department, dated October 4th, 1856, wherein authority is given to prepare and transmit the usual certified statements for refund of duty on "sea freight," paid under written protest.

As the parties who represent several of the claims have made complaint of the delay attending the preparing of the same in your office, you are requested to have the above instructions complied with at your earliest convenience.

HOWEL COBB,
Secretary of the Treasury.

AUGUSTUS SCHELL, Esq.,
Collector, New York.

Exhibit E.—J. M. D.

TREASURY DEPARTMENT, *May 4th*, 1859.

SIR: I acknowledge the receipt of your communication of the 3d instant, respecting the rate of commission on which duties should be assured in cases of importations from Prussia.

I have to state, in reply, that as the law prescribes the "usual rate" only, and you report that two per cent. is the usual rate in that country,

such rate necessarily becomes the proper one on which you should levy the duties.

241 Any erroneous practice which may exist at your port should be corrected, to conform to the above instruction.

I am, very respectfully,

P. CLAYTON,
Acting Sec'y of the Treasury.

A. SCHELL, Esq.,
Collector &c., New York.

Exhibit F.—J. M. D.

[Extract from Treasury decision, dated March 26th, 1859.]

Commissions.

It is required by the law that duties should be assessed on commissions in every case at the usual rates.

A regulation of the Department forbids the assessment of duties on commisions at rates less than 2½ per cent., without its specific authority previously given.

In cases where it is claimed that duties should be levied on commissions, at rates less than 2½ per cent., and the Department has not heretofore sanctioned the allowance at such rates, and the collector is satisfied that the rate claimed is the usual one, he will report at once the case to the Department, with his opinion, with the reason therefor, and await its decision.

When rates less than 2½ per cent. have been or may be authorized by the Department, and the collector is satisfied that there has been a change of rate, he will at once report that fact, and his reasons therefor, to the Department, for its consideration and action.

The object of this regulation is to produce uniformity at the several ports in this matter, and is intended to supersede and modify regulation contained in article 306 of General Regulations of the 1st of February, 1857, only so far as it conflicts therewith.

242 Exhibit G.—J. M. D.

TREASURY DEPARTMENT, *May 30th*, 1859.

SIR: Your report, relative to the rate of commissions in Saxony and the Zoll-Verein States, has been received, and as the course pursued by you is in compliance with circular instructions dated March 26th and my letter of the 21st instant, it is hereby approved.

The Department would call your particular attention to the circular and letter above referred to, upon which should be based the rates of commissions to be charged on importations, which should be the usual rate in the country from whence the goods were exported.

I am, respectfully,

HOWELL COBB,
Secretary of the Treasury.

AUGUSTUS SCHELL, Esq.,
Collector, New York.

Exhibit H.—J. M. D.

TREASURY DEPARTMENT, *June 15th*, 1860.

SIR: Your letter, enclosing the report of the appraisers, relative to the rates of commissions in the markets of Great Britain, has been received, and you are hereby instructed in all cases hereafter to assess duties upon the usual rate of commission in the principal markets of the country where the merchandise may be purchased.

The alleged claim of Graxdon, Swanwick & Co., coming within
243 the above decision, you are hereby authorized to prepare and transmit to this Department the usual certified statement for consideration.

I am, respectfully,

HOWELL COBB,
Secretary of the Treasury.

AUGUSTUS SCHELL, Esq.,
Collector, New York.

Exhibit I.—J. M. D.

TREASURY DEPARTMENT, *June 9th*, 1862.

SIR: I am in receipt of your report of the 24th ultimo, on the appeal taken by Messrs. Benkard & Hutton from the assessment of duty by you on certain charges added by the appraisers to their invoices, per "Hansa," in February, "Bremen" and "Hansa" in March last, the appellants contending that the said charges were included in the invoice price of the goods.

As it appears from the report of the appraisers that the charges added by them to the invoice were the usual costs and charges to be added to the "actual market value or wholesale price," to fix the dutiable value, I perceive no reason to interfere with your decision in the case.

I have here to state, for your information, that this class of cases is not deemed as coming under the provisions of the fifth section of the act of March 3d, 1857, that section having special reference to the liability of "goods, wares, or merchandise to duty, or exemption therefrom, and not to 'charges.'"

I am, very respectfully,

S. P. CHASE,
Secretary of the Treasury.

HIRAM BARNEY, Esq.,
Collector, New York.

244 Exhibit J.—J. M. D.

Additional instructions.

TREASURY DEPARTMENT, *May 21st*, 1863.

Collectors and others are informed that this Department concurs in the decisions of the courts, that charges for transportation of goods from the interior of the country by railroad or water carriage, incurred prior to the time of exportation, can not be added to the value of the goods for the purpose of establishing their dutiable value.

All costs and charges incidental to the shipment, such as port charges, drayage, commissions, export duty, &c., &c. (except marine insurance), should be added to the value of any goods, wares, or merchandise in the principal markets, to fix their dutiable value.

The usual and legal rate of commissions on merchandise from Great Britain has been decided in the United States circuit court at New York (Bredt vs. Schell, collector) to be one and one-half per centum, and that of commissions on merchandise from continental Europe, except Paris (see same case), to be two per cent.

In this decision the Department also concurs.

S. P. CHASE,
Secretary of the Treasury.

245 Exhibit K.—J. M. D.

United States circuit court for the southern district of New York.

Present, Judge Hall.

TUESDAY, *April 19th*, 1864.

A. ALDRIDGE ET AL. *vs.* HEMAN J. REDFIELD.	Kaufmann, Frank & Wilcoxson.	$1,000.	E. D. Smith.

On motion of Mr. Wilcoxson, ordered inquest.

Jurors sworn: Bernard Crawford, William Richards, John W. Harnes, David Bedell, Jacob Eidt, F. Reinbring, Thomas Clenin, Frederick E. Zahn, Ledyard Aney, Edward Moore, Richard Carhadle, Joshua Mesnore.

By consent of counsel, the jury find verdicts for the plaintiffs in the above-entitled actions for excess of duties, with interest thereon, illegally exacted from plaintiffs and paid under protest to defendant, and not barred by the statute of limitations.

On commissions over 1½ per centum, on merchandise imported by plaintiffs at New York from Great Britain.

On commissions over 2 per centum, on merchandise imported by plaintiffs from the continent of Europe (except Paris).

On the discount of 2½ per centum, disallowed on linens imported by plaintiffs at New York from Ireland.

246 On blankets imported by plaintiffs at New York, over 20 per centum, ad valorem.

On velveteens, moleskins, corduroys, fustians, and embossed velvets imported by plaintiffs at New York, over 20 per centum, ad valorem.

On hemp carpets imported by plaintiffs at New York, over 20 per centum, ad valorem.

On coastwise transportation charges from Ireland and Scotland to England, on merchandise imported by plaintiffs at New York from Ireland and Scotland via England, and on additions to make market value of said merchandise at London and Liverpool.

On charges on merchandise imported by plaintiffs at New York, for the transportation of goods from the interior of the country, by railroad or water-carriage, incurred prior to the time of exportation.

On transportation charges from the continent of Europe to Great Britain, on merchandise imported at New York, from the continent of Europe via Great Britain, the amount of excess of duties exacted from the plaintiffs and paid to the defendant, and embraced in the plaintiffs' bills of particulars to be adjusted by the clerk of the court or his deputy.

It is expressly stipulated, that in case it shall appear on an adjustment or otherwise, in any case, that the suit was not brought within the time prescribed by the statute of limitations, or that the questions of the timeliness of protest, or the question of a continuous or prospective protest shall be involved, the verdict shall be opened and opportunity to appeal be given to, and, at the option of the district attorney, a certificate of probable cause, &c., to be entered in each case. The right to appeal on writ of error, as above, not to be reserved by the district attorney unless the amount involved be sufficiently large to allow such writ of error.

247	C. ANGRAVE *vs.* HEMAN J. REDFIELD.	$1,900.	The same counsel, jury, and a like verdict.
	SAML. D. BABCOCK ET AL. *vs.* THE SAME.	$3,000.	The same counsel, jury, and a like verdict.
	F. BUTTERFIELD *vs.* THE SAME.	$1,900.	The same counsel, jury, and a like verdict.
	B. F. BABCOCK ET AL. *vs.* HEMAN J. REDFIELD.	$1,800.	The same counsel, jury, and a like verdict.
	WILLIAM BRAND ET AL. *vs.* THE SAME.	$1,900.	The same counsel, jury, and a like verdict.
	WEYMAN CROW ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
248	H. B. CLAFLIN ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	WARREN CARTER ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	W. CLAPP ET AL. *vs.* THE SAME.	$1,800.	The same counsel, jury, and a like verdict.

	George A. Fanshawe et al. *vs.* Heman J. Redfield.	$6,000.	The same counsel, jury, and a like verdict.
	Horace I. Fairchild et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Joseph Fisher et al. *vs.* The Same.	$1,500.	The same counsel, jury, and a like verdict.
249	James Houghton et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	John B. Hall *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	G. H. Kissel et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Samuel McLean et al. *vs.* Heman J. Redfield.	$3,000.	The same counsel, jury, and a like verdict.
	L. P. Morton et al. *vs.* The Same.	$1,500.	The same counsel, jury, and a like verdict.
	Joseph M. Strong et al. *vs.* The Same.	$2,000.	The same counsel, jury, and a like verdict.
250	John Sykes, Jr., *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Wm. Sturges, Jr., et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	F. Skinner et al. *vs.* The Same.	$1,900.	The same counsel, jury, and a like verdict.
	T. Slocumb et al. *vs.* Heman J. Redfield.	$1,900.	The same counsel, jury, and a like verdict.

HERMAN STURSBURG ET AL.
vs.
THE SAME.
$1,600. The same counsel, jury, and a like verdict.

WILLIAM WATSON ET AL.
vs.
THE SAME.
$5,000. The same counsel, jury, and a like verdict.

251 L. O. WILSON ET AL.
vs.
THE SAME.
$1,900. The same counsel, jury, and a like verdict.

WM. C. ALLEN ET AL.
vs.
THE SAME.
$1,500. The same counsel, jury, and a like verdict.

AARON ARNOLD ET AL.
vs.
THE SAME.
$1,000. The same counsel, jury, and a like verdict.

ED. ARMSTRONG
vs.
HEMAN J. REDFIELD.
$500. The same counsel, jury, and a like verdict.

H. M. AVERY ET AL.
vs.
THE SAME.
$500. The same counsel, jury, and a like verdict.

HUGH MCBARTLIE ET AL.
vs.
THE SAME.
$2,000. The same counsel, jury, and a like verdict.

252 RICHARD BELL
vs.
THE SAME.
$1,000. The same counsel, jury, and a like verdict.

R. MCC. BUTT ET AL.
vs.
THE SAME.
$1,500. The same counsel, jury, and a like verdict.

WM. BLISS ET AL.
vs.
THE SAME.
$600. The same counsel, jury, and a like verdict.

J. BADNALL ET AL.
vs.
HEMAN J. REDFIELD.
$500. The same counsel, jury, and a like verdict.

WM. D. CROMWELL ET AL.
vs.
THE SAME.
$3,000. The same counsel, jury, and a like verdict.

F. FICKEY ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

253 SAMUEL GRAYDON ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

ANDREW GIHON ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

MARTIN A. HOWELL ET AL. *vs.* THE SAME. — $1,500. The same counsel, jury, and a like verdict.

WM. C. HAGGERTY ET AL. *vs.* HEMAN J. REDFIELD. — $1,000. The same counsel, jury, and a like verdict.

SAMUEL HOLMES ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

WILLIAM H. LEE ET AL. *vs.* THE SAME. — $2,000. The same counsel, jury, and a like verdict.

254 D. LAMB *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

N. LODER ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

C. W. MOORE ET AL. *vs.* THE SAME. — $3,000. The same counsel, jury, and a like verdict.

S. MILLIKIN ET AL. *vs.* HEMAN J. REDFIELD ET AL. — $1,000. The same counsel, jury, and a like verdict.

JNO. A. MURPHY ET AL. *vs.* THE SAME. — $1,000. The same counsel, jury, and a like verdict.

D. M. MILLIS ET AL. *vs.* THE SAME. — $1,200. The same counsel, jury, and a like verdict.

255	CHARLES ANDRE ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	JAMES ACKER ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	JAMES ALBRO ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	D. S. ARNOLD ET AL. *vs.* THE SAME.	$900.	The same counsel, jury, and a like verdict.
	C. F. BLAKE *vs.* THE SAME.	$1,800.	The same counsel, jury, and a like verdict.
	JOSEPH CONNAH *vs.* THE SAME.	$2,000.	The same counsel, jury, and a like verdict.
256	ED. W. BANCROFT ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	E. COCK ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	CHAS. E. CLAGHORN *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	JOHN G. CRANE ET AL. *vs.* HEMAN J. REDFIELD.	$1,000.	The same counsel, jury, and a like verdict.
	A. G. CRANE ET AL. *vs.* THE SAME.	$1,900.	The same counsel, jury, and a like verdict.
	PETER DONALD *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
257	THOMAS DREW ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.

	A. F. Edgerton *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	James Elliott *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Thomas W. Evans et al. *vs.* Heman J. Redfield.	$1,000.	The same counsel, jury, and a like verdict.
	A. Fassit et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Chas. C. Goodrich et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
258	I. S. Gillespie et al. *vs.* The Same.	$1,500.	The same counsel, jury, and a like verdict.
	F. M. Jones et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	Geo. Johnson et. al. *vs.* The Same.	$1,800.	The same counsel, jury, and a like verdict.
	E. E. Morgan *vs.* The Same.	$1,800.	The same counsel, jury, and a like verdict.
	John Morrison *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	W. Morrison et al. *vs.* The Same.	$1,200.	The same counsel, jury, and a like verdict.
259	John Nicholson *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.
	F. T. Peet et al. *vs.* The Same.	$1,000.	The same counsel, jury, and a like verdict.

	JAMES M. P. PRICE ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	A. PLIMPTON ET AL. *vs.* HEMAN J. REDFIELD.	$1,000.	The same counsel, jury, and a like verdict.
	T. PATON ET AL. *vs.* THE SAME.	$1,500.	The same counsel, jury, and a like verdict.
	F. T. PEET ET AL. *vs.* THE SAME.	$1,500.	The same counsel, jury, and a like verdict.
260	S. W. ROOP ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	H. F. SPAULDING ET AL. *vs.* THE SAME.	$2,000.	The same counsel, jury, and a like verdict.
	CHARLES SMITH ET AL. *vs.* THE SAME.	$1,500.	The same counsel, jury, and a like verdict.
	J. SCHAFFNER ET AL. *vs.* HEMAN J. REDFIELD.	$1,000.	The same counsel, jury, and a like verdict.
	C. E. SILL ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	ROBERT SLEWIMOER ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
261	J. SEIGMAN ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	SMITH O'BRIEN ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
	A. SMITH ET AL. *vs.* THE SAME.	$1,900.	The same counsel, jury, and a like verdict.

JOEL THOMAS *vs.* HEMAN J. REDFIELD.	$1,000.	The same counsel, jury, and a like verdict.
WM. THOMPSON *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
G. TINGLE ET AL. *vs.* THE SAME.	$1,800.	The same counsel, jury, and a like verdict.
262 W. TAYLOR ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
I. A. UBSDELL ET AL. *vs.* THE SAME.	$1,800.	The same counsel, jury, and a like verdict.
S. WILDER ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
JAMES H. WOODS ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.
W. S. WILSON ET AL. *vs.* THE SAME.	$1,900.	The same counsel, jury, and a like verdict.

A copy from the common law minutes.

[L. S.] TIMOTHY GRIFFITH, *Clerk.*

263 Exhibit L.—J. M. D.

THURSDAY, *April* 21, 1864.

The court meet pursuant to adjournment, and is opened by proclamation.

Present, Hon. Judge Hall.

JAMES BENKARD ET AL. *vs.* HEMAN J. REDFIELD.	Kauffmann, Frank & Wilcoxson. E. D. Smith.	$5,000.

On motion of Mr. Wilcoxson, ordered inquest.

Jurors sworn: Edward Moore, Edward W. Ketchum, Joseph M. Greely, Franz C. Kiettat, Joshua Monroe, Partrick A. Bowen, Joseph F. Brush, Waldo Phillips, Godfrey Biering, F. Reineking, Peter Berg, Thomas D. Stetson.

By consent of counsel the jury find a verdict for the plaintiffs in the above entitled action, for excess of duties, with interest thereon, illegally exacted from plaintiffs, and paid under protest to defendant, and not barred by the statute of limitations, on commissions over one and one-half per

centum, on merchandise imported by plaintiffs at New York from Great Britain; on commissions over two per centum on merchandise imported by plaintiffs at New York from the continent of Europe (except Paris); on the discount of two and one-half per centum disallowed on linens imported at New York from Ireland; on charges on merchandise imported at New York from Ireland; on charges on merchandise imported at New
264 York for the transportation of the goods from the interior of the country by railroad or water carriage, incurred prior to the time of exportation; on coastwise and transportation charges from Ireland and Scotland to England on merchandise imported at New York from Ireland and Scotland, via England; and on additions to make market value of said merchandise at London and Liverpool; on transportation charges from the continent of Europe to Great Britain on merchandise imported at New York from the continent of Europe via Great Britain; on merchandise imported by the plaintiffs at New York, and invoiced in Bremen thalers, by the Bremen thaler having been computed in assessing duties at a higher rate than seventy-one cents, the rate at which it should by law have been computed, the amount of excess of duties exacted from the plaintiffs, and paid to the defendant, and embraced in the plaintiffs' bill of particulars, to be adjusted by the clerk of the court or his deputy. It is expressly stipulated that in case it shall appear, on an adjustment or otherwise, in any case that the suit was not brought within the time prescribed by statute of limitations, or that the question of timeliness of protest or sufficiency of protest, or the question of a sufficiency of a continuous or prospective protest shall be involved, the verdict shall be opened and opportunity to appeal be given to and at the option of the district attorney. A certificate of probable cause to be entered in each case.

The right to appeal or writ of error, as above, not to be reserved by the district attorney, unless the amount involved be sufficiently large to allow such writ of error.

C. E. BORSDORFF ET AL. *vs.* THE SAME.	$1,900.	The same counsel jury, and a like verdict.
265 G. F. W. BARTELS ET AL. *vs.* THE SAME.	$1,500.	The same counsel, jury, and a like verdict.
A. ISELIN ET AL. *vs.* THE SAME.	$1,000.	The same counsel, jury, and a like verdict.

A copy.
[L. S.]

JOHN I. DAVENPORT, *Clerk.*

Exhibit M.—J. M. D.

THURSDAY, *March 16th*, 1865.

The court meets pursuant to adjournment and is opened by proclamation.

Present, Hon. Judge Shipman.

In the matter of the adjustment of suits against the collector of customs of New York.

Ordered, that all the orders heretofore made by this court, referring certain suits against the collector of the port of New York, to the clerk of this court for adjustment, be and the same are hereby revoked, except as to such cases the adjustment of which has actually commenced before him.

An extract from the minutes.

[L. S.] J. M. DEUEL, *Clerk.*

266 Exhibit N.—J. M. D.

SATURDAY, *July* 1*st.* 186[illegible]

Before the Hon. Samuel Nelson, at Cooperstown.

In the matter of the adjustment of suits against the collector of customs of New York.

Ordered, that all suits in which Kaufman, Frank and Wilcoxson are attorneys of record for the plaintiffs, references to the clerk in which have been revoked by the order of March 16th, 1865, be and the same are hereby referred to the collector of the port for adjustment.

An extract from the minutes.

[L. S.] J. M. DEUEL, *Clerk.*

Exhibit O.—J. M. D.

At a term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-four.

Present, The Hon. Samuel Blatchford, district judge.

Verdicts April 19th, 1864.

A. ALDRIDGE ET AL.
vs.
HERMAN J. REDFIELD.

And other cases.

267 Verdicts of April 21st, 1864.

CHAS. E. BORDSDORFF ET AL.
vs.
HEMAN J. REDFIELD.

GEO. F. W. BARTELS ET AL.
vs.
HEMAN J. REDFIELD.

And other cases.

On motion of E. Delafield Smith, of counsel for the respective plaintiffs in the above-entitled causes, George Bliss, U. S. attorney, appearing for the several defendants.

It is ordered that the referee therein, in adjusting any of the above cases, shall not exclude from his report any item or items for the reason that said item or items were paid more than six years before the commencement of suit, unless it shall appear that the statute of limitations were duly pleaded by the defendant in such cases, and the referee is instructed to include such items in his reports and statements, unless the statute has been pleaded.

But the defendant may, within thirty days after the service of bills of particulars in the cases in favor of C. E. Bordsdorff et al., William Loeschigk et al., J. A. Ubsdell et al., make such application as may be advised, with a view of procuring to be determined the question, whether this action, in favor of the same plaintiffs in which A. W. Griswold is attorney and those named herein, are all entitled to be maintained against the defendant, and if all are not entitled to be so maintained, then of determining which shall be so maintained, and no proceedings shall be taken in such mentioned actions until said thirty days have expired.

(Signed) SAM'L BLATCHFORD.

A copy.

J. M. DEUEL, *Clerk.*

268 Exhibit P.—J. M. D.

OFFICE OF THE DISTRICT ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, Dec. 28th, 1865.

C. P. CLINCH, Esq.,
Special Deputy Collector of the Port:

SIR: In the several cases—a list of which is hereto annexed—which are pending in the United States circuit court for this district, you are requested, in conformity with a rule established by the court, to adjust and report to me the amount of excess of duty, with interest thereon to date of adjustment, illegally exacted on importations embraced in the plaintiffs' bills of particulars herein inclosed, paid under protest and not barred by the statute of limitations.

On commissions over two per centum on merchandise imported from the continent of Europe (except Paris); on commissions over one and one-half per centum on merchandise imported from Great Britain; on charges for the transportation of goods from the interior of the country, by railroad or water carriage, incurred prior to the time of exportation; on coastwise transportation charges from Ireland and Scotland to England—added to make market value at London and Liverpool; on freight and charges from France via England to New York; and on charges on importations from the continent of Europe, above those set forth in the report of Isaac Phillips, appraiser.

On all the branches of these cases the adjustment should be in conformity with the verdict in the case of A. Moller et al vs. Augustus Schell, reported to you by letter of my predecessor in office, dated November 23d, 1863.

I am, sir, very respectfully, yours,

D. S. DICKINSON,
U. S. Dist. Att'y.

269 Jas. Benkard and Benj. H. Hutton against Augustus Schell, late collector of the port of N. Y.

William Watson and Walter Magee agst. The Same.

Frederick Butterfield vs. The Same.

W. Bauendahl and L. J. Stiastney agst. The same.

Aaron Arnold, Jas. R. Constable, Richd. Arnold and J. P. Baker agst. The Same.

W. C. Allen, C. O. Hazen, S. Shaw, C. Allen and A. Van Berger, jr., agst. The Same.

F. Cottenet and H. L. Atherton agst. The Same.

Gustavus Hessenberg and J. Auffmordt agst. The Same.

Exhibit Q.—J. M. D.

TREASURY DEPARTMENT,
October 23*d*, 1866.

SIR: I have considered your letter of the 14th August, relative to instructions which should be given in the matter of certain suits instituted against the collector of customs at New York, for the return of duties alleged to have been illegally exacted.

I am of the opinion that the instructions which have heretofore been given to the district attorney—to plead the act of limitation to all claims instituted against the collectors—should be reiterated.

Where prospective protests are relied on, it is my opinion that their legality should be resisted, and the matter left to the decision of the court.

The district attorney should be instructed to bring to the notice of the court the informality, which it is represented has for some time existed, of having the statements upon which judgments are rendered made up at the custom-house. I fully concur with you in the opinion expressed, "that no verdict should be permitted, except for a sum certain, after a settlement in an appropriate way of all questions, both of law and fact, and that it should be either by a jury or by some officer of the court, its clerk,
270 one of its commissioners, or some other like officer who will be amenable to its order," and whose reports would be "subject to the exception by either party, as to the matter both of law and fact."

The district attorney should also be instructed to reserve, by bill of exceptions, all points of law decided by the court adversely to the United States.

I am, very respectfully,

H. MCCULLOCH,
Secretary of the Treasury.

Hon. EDWARD JORDAN,
Solicitor of the Treasury.

Exhibit R.—J. M. D.

TREASURY DEPARTMENT,
SOLICITOR'S OFFICE,
October 24*th*, 1866.

SIR: Herewith enclosed I transmit a copy of a letter which I have just received from the Secretary of the Treasury, in relation to the conduct of

suits instituted against the collector of customs at New York, for the return of duties alleged to have been illegally exacted, and you are requested to conform your action to the views therein expressed.

Very respectfully,

EDWARD JORDAN,
Solicitor of the Treasury.

SAM'L G. COURTNEY, Esq.,
U. S. Attorney, N. York.

Exhibit S.—J. M. D.

TREASURY DEPARTMENT, SOLICITOR'S OFFICE,
August 25th, 1869.

SIR: Your letter of the 23d inst., addressed to the Secretary,
271 calling attention to the suits known as custom-house suits, and making certain enquiries in regard to the same, has been referred to me for an answer.

I think the suits should be disposed of upon settled principles of law, and with reference to such technicalities as the statutes have clearly interposed. I think the statute of limitations should be invoked, unless it is reasonably clear that in some intended manner the operation of this statute has been waived. In other words, I desire that these suits should be disposed of exactly as though they were suits between man and man.

I do not believe there are any rules of "General Justice" which can be invoked as applicable to these cases as distinguished from suits between private litigants.

These suits are important to the Government only by reason of the large amount of money involved in the aggregate, and not on account of any present or prospective importance of the principles involved.

They have been pending a long time; are a source of peculiar trouble and perplexity to all connected with them or responsible for action in regard to them, and I desire to have some plan agreed upon which will dispose of the cases in the fairest and simplest manner possible.

I expect to be in New York very soon, and I will call upon you to consult upon the subject, and in the mean time hope no action will be taken of a decisive character upon any important or doubtful point.

I think a full consultation will enable us to propose a plan of procedure which will be acceptable to those who represent the claimants, and will relieve your office and my own from a laborious task.

I am, very respectfully,

(Sgd.) E. C. BANFIELD,
Solicitor of Treasury.

Hon. EDWARDS PIERREPONT,
U. S. Attorney, New York.

272 Exhibit T.—J. M. D.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., Feb. 7th, 1871.

SIR: Referring to your letter of the 18th ultimo, on the subject of allowing verdicts to be entered by consent in the well-known "charges

and commission" cases, and also referring to the interviews which I have had with you recently upon the same subject, and with the purpose of carrying out the understanding arrived at upon this subject, I have the honor now to request that you will endeavor to arrange, with the consent of all the parties interested, by proper order from the court, for the reference of such of the above-named cases as it may be desirable to take action in, to some competent and proper person, for the purpose of arriving at and adjusting the amounts properly due in those cases, before having verdicts entered. My desire is to have the cases thus referred, in order that they may be disposed of intelligently, in accordance with the rules and principles of law which have already been determined in regard thereto, and that every proper safeguard may be thrown around the final disposition of the cases. It will be proper and right, under all the circumstances, I think, that the Government should have the right to interpose the statute of limitations wherever it appears to apply.

This adjustment by reference will be conducted in such a manner that, I think, the plaintiffs will have every opportunity to know that their full rights are secured to them, and that they will receive all to which they are properly entitled to. At the same time it will secure to the Government every right to which it is entitled, and will enable questions to be presented to the court upon which there may be any doubt, or upon which it seems to be desirable to obtain new rulings.

273 My belief is that, in the great majority of these cases, there will be no difficulty in arriving at a result satisfactory to all parties, and that, when so arrived at, the proper verdict can be entered in each specific case for the amount found to be due. In this way, I am certain the Government will be relieved from many of the difficulties which have hitherto attended the disposition of these cases, and it is my desire, in arranging this method for the disposition of the cases remaining on docket, to do so in a manner that will at once be safe for the Government and just to the plaintiffs. It is not my desire to interpose any technical or improper objections to the future adjustments.

I have reason to believe, from interviews previously had with the parties chiefly interested in these cases, that they will readily agree to the course which is now suggested.

In this connection I beg leave to suggest that Hon. Edwards Pierrepont will be a referee satisfactory to this office, and, as I have reason to believe, to the Treasury Department. His character and experience in connection with these very cases whilst he held the office of district attorney will give as complete a guarantee of an intelligent and satisfactory adjustment as can well be had.

I desire, therefore, that, as soon as convenient, you will arrange for the proper order of reference, the details of which I leave to be determined by yourself, in consultation with Judge Pierrepont, in case you have no objection to his selection as the referee.

I presume there will be no difficulty in securing the proper clerical assistance in making up the adjustment from clerks connected with the custom-house who have hitherto been detailed to this duty.

In regard to the compensation of the referee for his services, it occurs to me that it will be proper to leave such compensation to the judgment of the court at the time of the entering of the verdicts.

I beg leave to add, that if the cases in which verdicts were re-
274 cently entered by consent could be referred to Judge Pierrepont for adjustment, either by vacation of the verdict or under the verdict, for the ascertainment of the amount due, I think it would facilitate the final payment of the claims.

I am, very respectfully,

(Signed) E. C. BANFIELD,
Solicitor of the Treasury.

Hon. NOAH DAVIS,
U. S. Attorney, New York City.

Exhibit U.—J. M. D.

[Extract from Order of Reference to Edwards Pierrepont, Esq., dated April 22d, 1871.]

C. F. VAN BLANKENSTEYN, EXOR., &C.
vs.
AUGUSTUS SCHELL.

And other cases.

* * * * * * *

And it is further ordered, that said referee state and report the amounts ascertained by him on said several commissions and charges separately, and the facts found by him in respect thereto, and in respect to the protest touching the same.

That he give notice to the attorneys of the respective parties, of the time and place of hearing therein, and that either party may, on the hearing before said referee, raise objections and exceptions, and the referee shall decide thereon, and either party m y bring such objections and exceptions to a hearing before the court, after the report of such referee shall be filed, and for that purpose may require the referee to report the evidence or testimony taken in the case upon which the ob-
275 jection or exception arises, in such manner as the court shall direct, and copies of the protests filed therein respectively.

Exhibit V.—J. M. D.

OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, May 11, 1874.

Hon. WILLIAM A. RICHARDSON,
Secretary of the Treasury:

SIR: On the 29th of December, 1870, verdicts in 100 cases against collectors of customs in certain "charges and commissions" suits were taken by consent.

I enclose a copy of the general verdict, marked No. 1, by which you will see that the verdict was upon certain illegal exactions "not barred by the statute of limitations." It did not appear that the statute of limitations had been pleaded in any of the cases, and, although it might have been interposed in many of them, only a plea of general issue was put in.

These cases were referred to the collector of the port for adjustment, and many of them have been determined and paid. In some cases it appeared upon the adjustment that certain items were barred by the statute of limitations, and were accordingly omitted by the collector in his adjustment, such omission being known to and not opposed by the attorney for the plaintiffs.

In one of these cases, R. Mc. C. Butt, *et al.* vs. Augustus Schell, O. S. 1619, application has recently been made to the court for instructions to the collector, to include in his statement sums paid more than six years before the commencement of the suit. I opposed the motion, and read the affidavit of Mr. Davies, a copy of which I enclose, marked No. 2. This was met by an affidavit of Mr. E. D. Smith, marked No. 3. Judge
276 Blatchford, before whom the motion was made, said in effect, that the proper construction of the words "not barred by statute of limitations" would only exclude items relative to which the statute had been pleaded. and that there was no bar from lapse of time without the proper plea. He therefore made the order, a copy of which I mark No. 4.

The effect of this last decision will be, I believe, to let in claims for many thousands of dollars—probably over a hundred thousand—against the Government, whereby the merchants will benefit but slightly.

It seems to me that this is a climax to a long series of motions and changes, which should induce some determined action on the part of the Government. All the questions which can be raised in these "charges and commissions" cases have been decided, and with almost entire uniformity, against the Government. Not only have all the points as to prospective protests, protest to one collector binding another, &c., &c., been so decided, but judgments adjusted for years and paid have on motion been opened and large additional amounts recovered—in one case $60,000—actions with different plaintiffs have been consolidated, bills of particulars been amended, most extraordinary alleged errors in names been allowed to be corrected, whereby large amounts have been taken from the Treasury. In short, it does not seem possible for any motion, however extraordinary, to be made without its being granted. One is made a precedent for another going a little further, and so it goes on.

In saying this I do not mean to reflect upon Judge Blatchford, who has made the decisions. He has formed strong opinions as to the law of the cases and justice of the claims, and, of course, conscientiously carried them out. But I think an appellate tribunal would differ from him in some of them.

I have already expressed to the Solicitor verbally my opinion, that a great mistake was originally made in not taking one or more of these cases to the Supreme Court. Though hundreds of thousands of dollars
277 have been taken from the Treasury, it is not too late to attempt to save as much more. Nearly or quite five hundred of these cases have not yet gone to judgment. I have therefore to request that I may be authorized to take writs of error in a sufficient number of these cases to present fairly the questions involved in the cases. The expense to the Government will be but slight compared to the possible saving. I have for sixteen months seen this system going on, chafing but thinking I had no course except to acquiesce in the former decisions of my superiors and the course of my predecessors, but I can not in justice to the Government

or myself to do so longer. If the Department thinks no writ of error should be taken, I shall of course acquiesce and do my best to dispose of the remaining cases as speedily as possible.

Very respectfully,

GEORGE BLISS,
U. S. Attorney.

Exhibit W.—J. M. D.

DISTRICT ATTORNEY OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, June 4, 1874.

Hon. B. H. BRISTOW,
Secretary of the Treasury:

SIR: In reply to the letter of your predecessor, dated May 23d, 1874, (H. B. J.), directing me to report what questions in the so-called commissions and charges cases I desire to have brought before the Supreme Court for its decision, I beg to say that the following are the points which seem especially important to me, though in case writs of error should be taken others will doubtless come up incidentally.

1. The entire question of what are dutiable charges under the act of March 3d, 1851, vol. 9, p. 629, should be passed upon.

278 2. Where goods have been invoiced free on board, it has been the practice (since Benkard vs. Schell was tried) to refund duties paid on charges added by importers, by compulsion, to make market value. This point should be reviewed.

3. The sufficiency of a continuous or a prospective protest should be taken up. If good, to what extent?

4. The question whether a protest addressed to one collector is applicable to his successor, if prospective protests are valid, should be settled.

5. The necessity of an appeal to the Secretary of the Treasury, upon the decision of the collector, against which the importer protests, under the act of 1857.

The decisions upon all the questions in this circuit have been, I am bound to say, adverse to the Government. Most of them have been presented more than once. This, I think, is true of all of them, except the question of the sufficiency of a protest to one collector as binding another. Judge Blatchford has recently decided it adversely to the Government, but Judge Nelson, some years since, expressed a different view.

I think the Department has heretofore acquiesced in the decisions upon these points, except as to prospective protests.

The question of a protest to one collector binding another has, I believe, never been before the Department.

As to the question of prospective protests generally I think, but am not sure, that the Department has acquiesced without its judgment being convinced.

Since the question of appeal has been mooted, the counsel interested have intimated that they were prepared to abandon all cases and items dependant upon the validity of a protest made to one collector as binding his successor, provided an appeal as to the other questions was abandoned.

They say that they have no fears as to the result of an appeal, but desire to avoid the additional delay, and insist that they will be put in
279 an embarrassing position with reference to their clients if, after part have been paid, further litigation is persisted in as to the others.

The force to be given to these and other arguments it is not for me to measure. I am perfectly clear, if I may say so without improperly criticising the actions of your predecessors, that in cases involving so much money, and presenting questions as to which opinions may fairly differ, and where, too, the merchant having charged to the customer all he has paid, has no great equity in his claims—ought originally to have been carried to the court of last resort. That the matter now stands in a different position from what it originally did, is true. The only question is now, it seems to me, whether the past acquiescence does not render an appeal inequitable.

Very respectfully,

GEORGE BLISS,
U. S. Attorney.

Exhibit X.—J. M. D.

TREASURY DEPT.,
Washington, D. C., June 10, 1874.

SIR: I have the honor to inclose herewith a copy of a letter from Geo. Bliss, esq., U. S. att'y for the southern dist. of N. Y., relative to the propriety of taking to the U. S. Supreme Court one or more cases involving certain questions of law therein referred to.

These cases are what are commonly known in this dep't as the charges and commissions cases, and embrace claims for overpaid duties on charges and commissions, under the act of M'ch 3d, 1851, Stats. at Large, vol. 9, page 629. The questions of law cited by the dist. att'y have heretofore, in several different cases, been decided by the U. S. circuit court at New York adversely to the Gov't (see Hutton vs. Schell, 6 Blatch., 48),
280 which decision has been acquiesced in by this Dpt., with the exception of the question whether a protest filed with one collector of customs is valid against his successor in office.

As the duty of arguing these questions in the Supreme Court will devolve upon you, should the Department decide to take the case there for review, I have the honor to request that you give the mattter your examination, and inform me whether, in your judgment, the points of law raised by the dist. atty. are of sufficient importance in these cases to justify the Dept. in suing out a writ of error to obtain the judgment of the Supreme Court in regard thereto.

I also enclose a brief, prepared several years since by a gentleman then in this Dept., as also a report from Edward Jordan, esq., former Solicitor of the Treasury, dated August 5th, 1867, in relation to the points raised in the cases in question.

I will thank you to return the two latter documents.

I am, &c.,

B. H. BRISTOW,
Secretary.

Hon. G. H. WILLIAMS,
U. S. Attorney-General, Washington, D. C.

Exhibit Y.—J. M. D.

DEPARTMENT OF JUSTICE,
June 25th, 1874.

The SECRETARY OF THE TREASURY:

SIR: In response to yours of the 10th instant, asking for the opinion of the Attorney-General, whether writs of error shall be prosecuted in what are known as the charges and commissions cases, recently determined in the southern district of New York, I submit the following considerations:

Inasmuch as your reference to the questions involved is very
281 general, I will refer to them as given in the letter of George Bliss, esq., U. S. attorney, &c., addressed to you on 4th of June last. I understand these questions to be interesting to the Government only so far as regards transactions now past, inasmuch as the statute at present in force (13 Stat., 214, sec. 14; and 217, sec. 24), as regards protests and valuations, makes special provisions for the matters herein at issue. I think it true that some of the principles which have been established by former Secretaries, as well as by circuit courts of the United States, in cases like those before you, might well in former years have been brought by the Government before the Supreme Court. The propriety of doing so at present makes a very different question, inasmuch as those principles have been acquiesced in for year after year, and have formed the basis upon—vast amounts of business—have been transacted in good faith, between the Government on one side and importers on the other, the more so that, as said above, under the recent change of legislation the reversal of that series of decisions is not to affect future business. This remark is especially applicable to cases involving the necessity of protests, and their forms under certain circumstances. As to such matters of practice, as it were, the United States is to be held bound by its acquiescence for a number of years in the decisions of its own officers, judicial and executive. The proper relief is that which has been administered, viz, an amendment of the statute.

The question as to what charges and commissions appraisers were, before the statute of June 30th, 1864, to include in ascertaining the dutiable value of goods imported is somewhat a different one. If that question had not been set at rest for the future by the above legislation (13 Stat., 217, sec. 24), there might be no objection to have it reconsidered. It was under the previous statute debatable, and some time since would have justified officers of the Government in bringing it before the Supreme Court. As
it is, however, the vast majority of the cases presenting the question
282 has uniformly been decided by the Secretaries and by the courts adversely to the Government.

It is not improbable that such decisions were correct; at all events, it is hardly seemly to question their application to that comparatively small remnant of cases upon which the old law still operates.

I understand Mr. Bliss to say that the parties who brought suit will abandon the issue as to protests addressed to some predecessor of the collector sued, in case the United States brings no writs of error as to the

other points. I therefore say nothing in regard to the validity of such protests. Upon this issue being abandoned, I advise that the United States do not bring writs of error in the cases above referred to.

Very respectfully, your obedt. servt.,

S. F. PHILLIPS,
Solicitor-General.

Approved, June 29th, 1874.

GEO. H. WILLIAMS,
Attorney-General.

Exhibit Z.—J. M. D.

TREASURY DEPARTMENT,
Washington, D. C., July 1st, 1874.

SIR: Respectfully referring to your letter of the 11th ultimo, relative to this Department suing out a writ of error to have the charges and commissions cases reviewed by the Supreme Court, I have to say that your letter and all papers necessary to an understanding of the case were sent to the Attorney-General for his opinion as to what course should be taken by this Department in the premises.

I am now in the receipt of a reply thereto from the Solicitor-General, approved by the Attorney-General, in which he takes the ground
283 that, in view of the long-continued acquiescence by this Department in the previous action of the courts in this class of cases, and the instructions issued in regard thereto by the various Secretaries of the Treasury, it is not expedient to take the cases in question to the Supreme Court. This opinion is qualified, however, to this extent, that it having been proposed by the parties in interest to abandon the issue as to whether protests addressed to and filed with one collector are valid as against his successor in office, stipulation to that effect should be made as a condition precedent thereto. Upon due examination of the matter I concur in the opinion thus expressed, and, consequently, writs of error in these cases will not be sued out, provided written stipulations be filed on the part of the parties in interest, agreeing to abandon the issue as to the validity of the protests thus referred to.

I am, very respectfully,

B. H. BRISTOW,
Secretary.

GEORGE BLISS, Esq.,
U. S. Attorney, New York.

In consideration of within I hereby stipulate to abandon the issue as to the validity of protests addressed to and filed with one collector as against his successor in office, and agree to make no claim by virtue of any such protests.

E. DELAFIELD SMITH,
Plaintiffs' Attorney.

New York, August 1, 1874.

ALMON W. GRISWOLD,
Pl'ffs' Att'y.

284 Exhibit A 1.—J. M. D.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., May 11th, 1875.

SIR: You are directed to take immediate steps to have the order of the court referring the cases known as the "charges and commissions cases" to a referee reversed. When this has been done I desire that all the legal questions arising in the cases pending may be presented to the court, for decision and exceptions taken, with a view of carrying the cases to the Supreme Court for adjudication, or that the proper measures may be had to bring about this result.

When the Secretary of the Treasury determined, some months ago, not to disturb the reference, he came to this conclusion, upon representations made, not by your office, however, that the amount involved in the cases was not large, but it has since been ascertained that the sums to be paid are of such magnitude as to make it necessary to adopt the course now indicated by me.

For this reason you will act upon the matter at once and report the result.

Very respectfully,

Solicitor of the Treasury.

GEORGE BLISS, Esq.,
U. S. Attorney, New York.

285 Exhibit B 1.—J. M. D.

U. S. circuit court, southern district of New York.

In the matter of certain suits brought to recover duties paid on certain charges and commissions, wherein orders of reference have heretofore been made to Edwards Pierrepont and John I. Davenport.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

George Bliss, being duly sworn, says that he has received from the Solicitor of the Treasury instructions of which a copy is hereto annexed.

GEORGE BLISS.

Sworn to before me this 21st day of May, 1875.

JOHN A. OSBORN,
U. S. Com.

Exhibit C 1.—J. M. D.

U. S. circuit court, southern district of New York.

In the matter of certain suits brought to recover duties paid on certain charges and commissions, wherein orders of reference have heretofore been made to Edwards Pierrepont and to John I. Davenport.

286 E. DELAFIELD SMITH, Esq.,
Attorney for Plaintiffs:

SIR: Please take notice that upon the affidavit, a copy of which is annexed, I shall move this court on Saturday, the 22nd day of May, 1875,

at 11 o'clock a. m., or as soon thereafter as counsel can be heard at the court-rooms in the U. S. court building, No. 41 Chambers street, New York, for an order vacating and setting aside the order made by this court on the 19th day of April, 1872, in a part of suits above referred to, by which such suits were referred to Edwards Pierrepont, esq., to ascertain the amounts due the respective plaintiffs, so far as relates to suits still unreported by said referee; also that the stipulation upon which said order was granted be set aside and canceled. Also for a further order, that the order made by this court on the 13th of March, 1875, by which a number of the suits above referred to were referred to John I. Davenport, esq., to ascertain the amounts due the respective plaintiffs, so far as said order relates to suits in which no reports have as yet been made by said referee; also that the stipulation upon which said order was made be set aside and canceled.

New York, May 18, 1875.

Yours, &c.,

GEORGE BLISS,
Def'ts' Att'y.

Exhibit D 1.—J. M. D.

In the matter of certain suits brought to recover duties paid on charges and commissions, and heretofore referred to Edwards Pierrepont and John I. Davenport, esqrs.

287 After hearing Mr. George Bliss, U. S. attorney, for the motion, and Mr. W. M. Evarts, in opposition,

Ordered, That said motion be denied, without prejudice to a motion upon any specific point or question which may be presented to the court hereafter.

(Signed) SAM'L BLATCHFORD.

A copy.

KENNETH G. WHITE, *Clerk.*

Exhibit E 1.—J. M. D.

NEW YORK, *June 28th*, 1875.

Hon. GEORGE BLISS, *U. S. Att'y:*

SIR: When you called my attention, nearly a year ago, to the letter of the Secretary of the Treasury of July 1st, 1874, and to the opinion of the Solicitor-General, concurred in by the Attorney-General of the U. S., touching the charges and commissions cases, in which he says:

"In view of the long-continued acquies'ence of the Treasury Department in the previous action of the courts in this class of cases, and the instructions issued in regard thereto by the various Secretaries of the Treasury, it is not expedient to take the cases in question to the Supreme Court.

"This opinion, however, is qualified to this extent, that it having been proposed by the parties in interest to abandon the issue, as to whether protests addressed to and filed with one collector are valid as against his successors in office, stipulation to that effect should be made as a condition

precedent thereto. Upon due examination of the matter I concur in the opinion thus expressed, and, consequently, writs of error in these cases will not be sued out, provided written stipulations be filed on the
288 part of the parties in interest, agreeing to abandon the issue as to the validity of the protests thus referred to."

It seemed to me, as it did to my clients in these cases, that the action of the Attorney-General's office, and of the Secretary of the Treasury, while it was severe in exacting the stipulation, it was creditable to the Government. It said, substantially: "You merchants of New York, who have patiently waited the convenience of the Government through the war, for twelve or fifteen years, for your money, while there has been paid to your more impatiant and exacting neighbors during that period more than $1,250,000 of similar claims, are informed that the Government does not now intend to dispute or question your right to recover this money, if paid under protest. You were led to believe by the decisions of the courts and by Treasury instructions concurring in these decisions, promulgated years ago, and by successive Secretaries of the Treasury, that your claims would be paid, and had you pressed them, as others did, you would long since have received your money. The Government does not intend to reward your patience by disputing your claims."

This was the interpretation which the merchants and their attorney placed on this action of the Attorney-General and the Secretary, and it was honorable.

In a spirit of compromise, which no one better appreciates than a merchant, they yielded to the Secretary's request and signed the written stipulation by which they surrendered to the Government what was equivalent to fifteen per cent. of their claims; and upon the execution of this stipulation these cases were referred to Mr. Davenport, a U. S. commissioner of the Government's own selection, who had completed only a few cases, though a large amount of work had been done upon others, when you announced that the Government proposes to recede from the compact—the stipulation—thus deliberately entered into between them, the Government and the merchants.

289 You are in a position to know that this announcement has created surprise, not only among those persons immediately interested in the question, but among others. You also know that the best thinking men believe as I do, that the Secretary has acted hastily from some sudden impulse or pressure, without deliberately considering the matter; and I am unwilling to believe that after the deliberate way in which he submitted the whole question to the Attorney-General, he will now attempt to repudiate his own and the Attorney-General's decision, without the advice or concurrence of that officer.

Besides, the Government is now saving by this last stipulation 15 per cent. of the claims, and also saving the difference between gold and currency, which is 15 per cent. more.

The claimants understand perfectly well that they are entitled to gold; the courts have so held, and the Government acquiesced, and they also understand that the question of protest covered by this stipulation was decided by Judge Nelson more than twelve years ago, March 13th, 1863, and the Government then held the case (P. Chouteau, jr., et al. vs. Redfield) under advisement for four months, and finally determined not to ap-

peal the case, and paid it, and have paid more than $200,000 of similar claims since, the courts having repeatedly affirmed this decision.

Now I suggest, in order to finally dispose of these charges and commissions cases, that, in addition to the stipulation waiving claims under protests made to prior collectors, that claimants also stipulate to waive the payment of their claims in coin, except where the overpayment has been made since the passage of the legal tender act in Feb., 1862, and that they also waive all claims to recover the difference between coin and currency, in cases where they have heretofore received payments in currency under protest. This would work a sure saving to the Government of 30
290 per cent., and the merchants would, for the sake of ending this litigation, accede to it.

Yours respectfully,

ALMON W. GRISWOLD,
Counsel for Claimants.

Exhibit F 1.—J. M. D.

JULY 2, 1875.

Hon. B. H. BRISTOW,
Secretary of the Treasury:

SIR: I enclose a letter received from A. W. Griswold, esq., one of the attorneys in the "commissions and charges cases." He informs me, and I also learn it from other sources, that Mr. Douglas, who represents the other plaintiffs, has prepared a similar letter, but that its transmission is delayed by his absence from the city.

Mr. Griswold, you will perceive, after stating a little vigorously the views of his clients, proposes that if a stipulation is entered into not to appeal in these cases. The plaintiffs will, on their part, stipulate to waive all claim for payment in gold, except in those cases where payment of the duties was made after the legal tender act was passed, this stipulation to cover cases already paid in currency as well as future cases.

I have already expressed to you my own views as to the present condition of these cases.

As you know, a year ago I thought and argued with such earnestness as I might, that appeals should be taken in these cases. The argument, however, was even then very strong that such a step on the part of the Government would be unfair. That having paid, without appeal, one-half the claim, the Government ought not to dispute the others further. While this argument did not convince me, it did the Attorney-General and yourself, though I have always thought that you did not at
291 that time fully appreciate the situation. This argument has of course been strengthened by the fact that since that time the proportion of the claims paid has been considerably increased.

At the time you declined to authorise appeals it was done on the condition that the plaintiffs should stipulate that if appeals were not taken they would abandon certain claims, to wit, those depending upon protests made to a collector prior to the one sued. The attorneys, in writing, entered into this stipulation, endorsing their acceptance of your condition upon the back of a copy of your letter. It was nowhere distinctly said that the agreement made by you referred to any cases other than those then

in judgment, but it was assumed by the plaintiffs that it applied to all of them, whether then in judgment or not, and I, without considering especially the question, whether the stipulation was a legal estoppel, also treated your decision as a final disposition of all of the cases. I therefore proceeded to refer them all for computation and adjustment.

The plaintiffs now insist that to appeal is an act of bad faith, and, in a recent argument in the circuit court, Mr. Evarts enlarged vigorously upon this view. Under all these circumstances, considering the large proportion of the claims already paid, considering the (at least) plausible claim, that the Government is estopped in good faith from appealing now, considering also the fact that a motion to set aside the orders of reference has been denied, and that an appeal from judgment upon the referee's report is involved in some difficulties (though of course they are not insuperable), I have come to the conclusion to advise, and do advise, that the proposition enclosed in Mr. Griswold's letter be accepted, with one proviso, however, and that is, that if the question of the applicability of the statute of limitations comes up in any of the future cases, or if any question comes up not directly decided in past cases, the Government is to be at liberty to appeal in such cases.

Your obdt. servant,

GEORGE BLISS,
U. S. Att'y.

292 Exhibit G 1.—J. M. D.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., December 21st, 1875.

SIR: The various papers relating to the charges and commissions cases have been again submitted to the Secretary of the Treasury, and he has instructed me to direct you to take every legal question involved in those not in judgment to the Supreme Court, if the circuit court should, on these questions being presented to it, overrule the positions taken by the Government.

No more refunds, will, therefore, in such cases, be made by him until a final judgment of the Supreme Court has been made determining these questions.

In my letter to you of May 11, 1875, directing you to have the order of the court, referring these cases to a referee, vacated, I stated that the Secretary, when he decided not to take an appeal to the Supreme Court, understood that the amount in the cases remaining unpaid was not large.

He now states distinctly that it was represented to him by the counsel of the plaintiffs that there was but a remnant left, and he understood that this remnant had passed into judgment. He had no idea that a large number had not even been sent to the referee, involving, if paid, an amount exceeding a half million dollars.

When, therefore, the Secretary agreed to abide by the decision of the Attorney-General, on the conditions specified in his letter to you of July 1st, 1874, that agreement was based on the idea, as represented by counsel of plaintiffs, that it related only to the remnant of these cases actually in judgment, and the opinion of the Solicitor-General is based upon the same idea.

You state in your letter to the Secretary, of July 2d, 1875, that a year ago you urged with such earnestness as you might that appeals should be taken in these cases. The Secretary is not aware of any such
293 urgent representations made to him on your part with regard to the necessity of taking appeals.

Your letter of June 4th, which is, I presume, the letter to which you refer, and which is the letter upon which the opinion of the Attorney-General was asked, was in answer to one of Mr. Richardson's, directing you to report what questions you desired to take to the Supreme Court, and simply states these questions. There is nothing in this letter which urges the necessity of taking an appeal on the part of the Secretary. On the contrary, it is fairly inferable from your letter that you did not mean to advise an appeal.

On the 28th of October last, in a letter to me, written after the court refused to vacate the order of reference, it is stated by you that on the motion to vacate the order it was sought at once by the plaintiffs to convert into a stipulation in the case the letter of the Secretary of July 1st, to which I have referred, by endorsing thereon a consent to its conditions, and that Mr. Evarts paraded the letter, and made a strong impression on the court and bar, that the Government could not in good faith appeal after such letter.

To this I have only to reply that Mr. Evarts, as the paid attorney of the plaintiffs, was bound to place before the court the case of his clients in as strong a light as possible, consistent with his professional honor, but that such statements can not alter the facts under the influence of which the Secretary wrote the letter, nor change the duty of the Secretary when such statements are found by him to have been unfounded in point of fact.

I understand you, however, to say that, notwithstanding the decision of the court on the motion, which somewhat embarrasses you, you can nevertheless take exceptions in the cases before the referee, and so have presented to the Supreme Court all the questions raised.

As the court overruled your motion to vacate the reference, I see no other course to take in the matter but the one you suggest, that is,
294 to raise all the points before the referee and request the court to pass upon them.

In this way, it seems to me, they all can be brought to the Supreme Court.

I do not desire, however, to prescribe the method to be taken to bring up the cases. I only desire, in accordance with the instructions of the Secretary, to direct you to take the proper steps to bring the questions involved to the Supreme Court.

This direction does not apply, however, to the cases in judgment at the date of the Secretary's letter. Such judgments will all be paid in accordance with the terms of that letter.

Very respectfully,

BLUFORD WILSON,
Solicitor of the Treasury.

GEORGE BLISS, Esq.,
U. S. Attorney, New York.

Exhibit H 1.—J. M. D.

DEPARTMENT OF JUSTICE,
OFFICE OF THE SOLICITOR OF THE TREASURY,
Washington, D. C., February 7th, 1876.

SIR: I return herewith the statement of facts sent me in your letter of the 2d instant, in the "charges and commission cases."

From the examination I have been enabled to make of the matter, all the points necessary to present to the Supreme Court seem to have been raised. I have, however, marked several statements, to which I call your attention. The necessity of agreeing to them is not apparent to me.

While I desired to see this statement before it was agreed to, for the purpose of making such suggestions as might occur to me, I do not want you to think that thereby less care should be taken by you to have
295 the case of the Government fully and fairly presented. On the contrary, I desire to impress upon you the necessity of seeing that every such question is presented, and that nothing is agreed unless you are satisfied that it can be proved on trial.

I wish to say, in conclusion, that the facts are agreed only for the purpose of determining the disputed questions of law in these cases. If the decisions of the Supreme Court should be adverse to the Government, every material fact necessary to make out the plaintiff's case on the subsequent proceedings must be proved, notwithstanding the agreed statement. Pending the decision of the Supreme Court, the cases now before the referee are not to be proceeded with, but are to remain to await that decision, with liberty to either party to submit then any competent proof. Claims to this effect should be put in the statement of facts.

With these directions the matter is left with you.

Very respectfully,

BLUFORD WILSON,
Solicitor of the Treasury.

GEO. BLISS, Esq.,
U. S. Attorney, New York.

Exhibit I 1.—J. M. D.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., Sept. 26, 1876.

In the matter of the suits known as "charges and commissions" cases, the Solicitor of the Treasury is directed to instruct the district attorney of the southern district of New York that this Department withdraws the instructions heretofore given to him to carry to the Supreme Court by appeal, writs of error, or otherwise such cases upon the following questions:

296 1st. Whether, under the tariff act of March 3d, 1851, it was legal for the collector of customs to add to the foreign cost or value of merchandise commissions greater than the usual rates paid in the places from whence the importation was made.

2nd. Whether, under the same law, it was legal to add the cost of trans-

portation, inland or coastwise, from the place from whence the merchandise set out, on a declared destination to the United States, to the last place of shipment.

3d. Whether, under the act, charges could be legally added in cases where the merchandise had been purchased to be delivered free on board, and the charges were, therefore, as claimed by the importers, embraced in the price paid.

4th. Whether a "prospective protest," or in other words, a protest in advance, was sufficient to save the right of importers, in cases where such additions as those specified in the foregoing paragraphs were made?

5th. Whether, after the passage of the act of March 3d, 1857, it was incumbent on the importer, in cases of additions being made, as required by the collector, to appeal to the Secretary of the Treasury.

As to any other questions arising in said cases, the Department does not, at this time, intend to give instructions.

(Sgd.) LOT M. MORRILL,
Secretary of the Treasury.

EXHIBIT I 2.—J. M. D.

OFFICE OF THE UNITED STATES DISTRICT ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, Nov. 1, 1876.

Gen. C. A. ARTHUR,
Collector.

297 SIR: I have to request that you will for a few days withhold payment, or the forwarding of statements in all "commissions and charges cases."

Your obedient servant,

GEORGE BLISS,
U. S. Atty.

Exhibit I 3.—J. M. D.

NEW YORK, *Nov.* 6, 1876.

Hon. LOT M. MORRILL,
Secy. of the Treas.:

SIR: The plffs. in the eight charges and commissions cases, in which judgments were entered in coin, as per statements transmitted to your department, a list of which is herewith enclosed, will satisfy those judgments on receipt of payment, as proposed by the Secretary, viz:

Where the principal was overpaid after the passage of the legal tender note act, Feb. 25, 1862, it is to be refunded in coin; all other payments to be in currency.

The courts have held here and the plaintiffs believe these duties are refundable in coin, and for a time the Department paid them in coin.

But, for the sake of securing a prompt disposition of these cases, the plaintiffs waive coin, as above stated.

I am, sir, yours respectfully,

ALMON W. GRISWOLD,
Atty. for Plffs.

Exhibit I 4.—J. M. D.

NEW YORK, *Nov. 6th*, 1876.
H.

Hon. GEO. BLISS:

DEAR SIR: Herewith I enclose you copy of the letter this day addressed to Mr. Morrill.

298 I think you will see that it will justify you in returning to the commissioner of customs the statement of Dale vs. Barney, which he sent on to you, and also in withdrawing your letter to the collector.

I am, yours, &c.

A. W. GRISWOLD.

T. B. S.

Exhibit I 5.—J. M. D.

4320 B.

TREASURY DEPARTMENT,
Washington, D. C., November 14, 1876.

77.

GEORGE BLISS, Esq.,
United States Attorney, New York:

SIR: The Department is in receipt of your letter of the 8th instant, further relating to certain judgments in the so-called "charges and commissions cases," and recommending their payment by the Department, in view of the fact that the attorney for the plaintiffs has waived all claim to their payment in coin for any portion other than the principal (duties) which accrued subsequently to February 25, 1862, the date of the so-called "legal tender act."

Upon due consideration of the matter, and as it is understood that such waiver will act as a bar to any subsequent claim on the part of the plaintiffs looking towards a re-opening of the judgments, or for the payment of any further moneys thereunder, the Department adopts your recommendation, and will take the necessary steps for the payment of all the claims now in its possession which are in a condition for examination and settlement.

299 It may be mentioned, however, for your information, that the collector of New York has been this day directed, before paying over any moneys in settlement of such judgments, to require the respective plaintiffs or their attorney to fully satisfy the same, and to file with the clerk of the court, as a part of the judgment roll in each case, a waiver of all claim to the payment in coin of any portion thereof other than the principal (duties) which accrued subsequently to the date of February 25th, 1862, as aforesaid.

You will please return to the Department the certified statement in the suit of Dale vs. Barney, together with the letter of the commissioner of customs accompanying the same, in case you no longer require them for further consideration.

Respectfully,

L. M. MORRILL,
Secretary.

Exhibit I 6.—J. M. D.

OFFICE OF THE UNITED STATES DISTRICT ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, Nov. 14, 1876.

Hon. LOT M. MORRILL,
Secretary of the Treasury:

SIR: As it is, I suppose, arranged that the payment of the charges and commissions cases shall go on, I transmit the statement in the case of Dale. As the parties certify you that they are willing to accept payment in the form you are willing to make it, I presume there is no further difficulty.

Your obedient servant,

GEORGE BLISS,
U. S. Att'y.

300 Exhibit J 1.—J. M. D.

OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF NEW YORK,
New York, March 29, 1877.

The Hon. GEO. F. TALBOT,
Solicitor of the Treasury:

SIR: Your letter of the 24th, covering a letter from the Secretary of the Treasury, was received. You ask whether any of the cases known as charges and commissions cases are in a position to carry to the Supreme Court. As far as the question of procedure is concerned, nearly all the open cases are in a position where an appeal could be taken. I could take the exceptions before the referee to his allowance of the various items of refund, and make a bill of them. The question of an appeal has often been considered, and at the time of the decision of the circuit court on the test case, and for some time thereafter, it was a question meriting attention. The case was not appealed, however, nor has any subsequent case been appealed; and the Government has paid, as nearly as I can ascertain, $1,750,000 of the $2,500,000 claimed in these cases. In the course of these payments the Government seems to me to have taken such an attitude and to have obtained such concessions from the claimants, that to resist the payment of the balance and appeal a case now would involve the good faith of the Government in its dealings with its citizens. A brief résumé of these cases, I think will show this.

Secretary Chase very early recognized the duty of the Government to make refund in these cases, and in a circular dated May 21, 1863, he concurred in the decision of the courts, and his commissioner of customs, in a letter dated May 25, 1863, to the collector of this port, directed the refund to be made without litigation. Up to the decision in the case of Hutton
agst. Schell, in 1868, refunds had been made sometimes with
301 and sometimes without suit. The claimants always claim that this decision, which was made upon a second trial of the case, was made upon an agreement by the Government to abide by it. The report (6 Blatchford, 48) shows that the second trial was had upon consent of the plaintiffs, who were then having the amount due then adjusted under their

victory on the first trial. The attorneys for the plaintiffs claim that they consented to the vacation of the first judgment, with the understanding that the new trial would be accepted by the Government as final in lieu of appeal, the Government believing it had new and important evidence. An assistant from the Treasury Department (Mr. Towle) appears upon the record as assistant to the United States attorney in this case. It was apparently made a test case. Your predecessor, Mr. Banfield, in a letter dated November 10, 1869, to the then United States attorney, appears to contemplate an appeal, but none was taken. The judgment was not, I am informed, paid until 1873. The failure to appeal this case, coupled with the fact that refunds began to be made in 1871 (see letter of Solicitor Banfield to District Attorney Davis, February 7, 1871), and continued until 1874, and especially in view of the action subsequently taken, seems to me to signify much as to the duty of the Government with respect to the cases of this character now remaining unadjusted.

On the 11th of May, 1874, my predecessor, Mr. Bliss, addressed a letter to the Secretary of the Treasury, calling his attention to the subject of the 100 verdicts which had just been taken by consent, and in reply to the Secretary's inquiry of date May 23, he set forth under date of June 4, 1874, the questions which he wished reviewed in these cases. Of these the first two, as questions of fact, it would seem to me to be unfair to raise again, now that they have been settled several times by juries, and acquiesced in by the Government for so many years. The third seems, in the minds of several judges who have tried these cases, to have been
302 settled by the case of Brune vs. Marriott (9 Howard, 619). The fourth has since been settled by the withdrawal of claims covered by it. The fifth, it is claimed, has been settled by the decision of the Supreme Court last year in the case of Watson vs. Barney (2 Otto, pp. 449–483, Act 1875). But this letter of Mr. Bliss was, by Secretary Bristow, on June 10, 1874, referred to Attorney-General Williams, who referred it to the Solicitor-General, and Mr. Phillips, in a report to the Secretary, dated June 25, 1874, advises "that the United States do not bring writs of error in the cases above referred to," for reasons similar to some of these I have suggested above. This report was approved by the Attorney-General. Upon its receipt Secretary Bristow replied to Mr. Bliss, under date of the 1st of July, 1874, concurring in its conclusions, and directed that writs of error in these cases be not sued out, provided "that the claimants abandon all claims growing out of their possession, that a protest filed with one collector bound his successor." The only two attorneys who represent the plaintiffs in these cases then signed a stipulation, which was indorsed on this letter of the Secretary, and is on file at this office, agreeing "to make no claim by virtue of any such protest." In a letter to the Solicitor of the Treasury, of date December 21, 1874, the Secretary reports his acquiescence, and in a letter to the Commissioner of Customs, of date April 17, 1875, he orders payment of the judgment—Mr. Bliss, in the meantime, under date of March 10, 1875, having forcibly argued, and advised against an appeal.

The next official action of the Department appears to be comprised in a letter purporting to be from the Solicitor of the Treasury, but unsigned by him, of date May 11. The Secretary of the Treasury had been deceived at the time of his previous action as to the amount involved in these

cases, and that this fact "made it necessary" to have the orders of reference of these cases "reversed;" that all the "legal questions arising in the
303 cases pending may be presented to the court for decision and exception, taken with a view of carrying the cases to the Supreme Court." Mr. Bliss made the motion to vacate the orders of reference at once, but on the hearing, Mr. Bliss, appearing for the Government, and the Hon. Wm. M. Evarts in opposition, the motion was, on the 24th of May, 1875, denied by the court. What occurred on the motion is set forth in a letter by my predecessor to the Solicitor of the Treasury, under date of May 25, 1875.

Payments of these judgments being still suspended, Mr. Bliss, in a letter to the Secretary of the Treasury, dated July 2, 1875, transmitted a written offer from Mr. Griswold, the attorney for many of the claimants, and a verbal one from Mr. Douglas, representing the remainder of them, that "if a stipulation is entered into not to appeal these cases," the plaintiffs would waive all claim to be paid in gold, except in cases where duties were paid after the passage of the legal-tender act. Mr. Bliss in that letter, after reviewing the action of the Government in accepting a previous concession from the plaintiffs, recommends that the offer be accepted. No immediate reply appears to have been received, but on December 21, 1875, your predecessor, Mr. Wilson, directed an appeal to be taken in cases not gone to judgment, by having exceptions entered before the referee. On the 2d of February, 1876, Mr. Bliss transmitted, in a letter dated on that day, a statement of facts, with exhibits to be used on appeal, but I do not find, on the records of this office, any reply from the Solicitor, or any direction to appeal. But, on the 14th of November, same year, the Secretary of the Treasury, Mr. Morrill, in a letter to my predecessor, Mr. Bliss, announced his acceptance of plaintiff's waiver of payment in gold offered as above set forth, and his decision, that thereunder the judgments should pe paid.

Since that time the judgments have been regularly paid under that stipulation, which it will be remembered waived payment in gold, provided the Government should take no appeal. It thus appears on the official
304 record that an important concession, which the plaintiff's attorney estimates at from 10 to 15 per cent. of their claims, namely, the waiver of recovery under continuous protests reaching from one collector to another, was made the basis of a waiver "in these cases" of an appeal by the Government, and when that was set aside, on the ground that the Secretary was deceived as to the amount, and after the Government had become possessed of the facts as to the amount of the claims still outstanding, the Government accepted a new concession, the waiver of gold payment offered on the distinct understanding that no appeals should be taken.

It therefore seems to me to be not a question of law, but a question of the good faith of the Government in its dealings with its citizens, whether an appeal ought now to be taken in these cases. Merchants might justly complain that after being taxed to pay a million and three-quarters of these claims to their fellows they should now be deprived of the payment to them of the half million remaining, especially since they had, as it were, bought the right to receive them without further litigation by two important waivers of claimed rights.

There remains only to be said in reply to the remaining inquiries of your

letter, that, as nearly as I have been able to ascertain in the very defective condition as regards entries of the old dockets of this office, and of the dockets of the plaintiff's attorneys, the cases now open number about 550, of which about 75 will be dropped on account of defects in proof, and that the amount to be paid will be in the neighborhood of half a million dollars, and can not, I think, exceed $750,000. I have a letter from Mr. A. W. Griswold, the attorney representing many of the plaintiffs, of date yesterday, saying that his cases are nominally 130 in number, but of these probably fifteen will fail for want of proof; that they amount in the aggregate to $175,000, possibly more, but probably less by several thousand dollars. A letter from Mr. Coughtry, representing the attorney in
305 all the other cases of this date on file here, states that he should judge all his claims would not exceed $400,000, including interest and costs.

Very respectfully,

STEWART L. WOODFORD,
United States Attorney.

Exhibit K 1.—J. M. D.

United States circuit court, southern district of New York.

PETER A. H. RENAULD ET AL.
vs.
AUGUSTUS SCHELL. } O. S. 514.

PETER A. H. RENAULD ET AL.
vs.
HEMAN J. REDFIELD. } O. S. 556.

A motion having come on to be heard before this court in the above-entitled causes, to open judgment therein.

Now, on reading and filing notice of motion, dated December 27th, 1876, and affidavits annexed of Almon W. Griswold and A. Heydenreich, on the part of the plaintiffs, and on reading and filing notice of motion, dated February 20th, 1877, and affidavit annexed of Almon W. Griswold having been heard for the motion on the part of the plaintiffs,
306 and Stewart L. Woodford, esq., United States district attorney, in opposition thereto, and due deliberation had:

It is ordered, that the judgments entered in the above-entitled causes upon the verdicts therein be vacated, and that the assessments of the plaintiffs' damages under the verdicts in said causes be referred to John I. Davenport, esquire, as sole referee.

And it is further ordered, that the referee proceed to adjust de novo the plaintiffs' damages under said verdicts in accordance therewith, and from the amount found due, if any, he deduct the sum paid upon the judgment heretofore entered in each of said cases respectively, and that he report the balance, if any, found due to the plaintiffs in each of said causes. The said referee shall give notice to the attorneys of the respective parties of the time and place of hearing therein, and either party may, on the hearing, raise objections, and said referee shall decide thereon, and

either party may file exceptions to such decision of the referee, within two days after the filing of the referee's report, and bring them to a hearing before the court upon four days' notice.

Dated March 7th, 1877.

SAM'L BLATCHFORD.

Exhibit L 1.—J. M. D.

Circuit court of the United States for the southern district of New York.

PETER A. H. RENAULD,
vs.
HIRAM BARNEY.

307 PETER A. H. RENAULD,
vs.
AUGUSTUS SCHELL.

PETER A. H. RENAULD,
vs.
HEMAN J. REDFIELD.

SIR: Please to take notice, that in each of the above entitled cases a motion will be made to vacate the order of March 7, 1877, vacating the judgment therein, and directing a reference to John I. Davenport, esq., to reassess plaintiff's damages according to the verdicts, and all proceedings under said order; that such motion will be made on the record, and all the proceedings in each of these cases before Judge Blatchford, at the U. S. circuit court rooms, in the city of New York, on Monday, the 20th day of May, inst., at eleven o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated New York, May 15, 1878.

Yours, &c.,

STEWART L. WOODFORD,
U. S. Atty. & Atty. for Def't.

To ALMON W. GRISWOLD, Esq.,
Plaintiff's Att'y.

308 Exhibit M 1.—J. M. D.

Circuit court of the United States for the southern district of New York.

P. A. H. RENAULD ET AL.
vs.
HEMAN J. REDFIELD.

SAME
vs.
AUGUSTUS SCHELL. "Charges and commissions cases."

SAME
vs.
HIRAM BARNEY.

Defendant's motion to vacate the order of March 7th, 1877, whereby judgment in the above entitled actions were vacated, and a reference made

to John I. Davenport, esq., to re-assess plaintiffs' damages, having come on to be heard before this court,

309 Now, on the record, and all proceedings had in these cases, and after hearing Stewart L. Woodford, the district attorney, and Samuel B. Clark, his assistant, in support of the motion, and Almon W. Griswold, esq., the attorney for the plaintiffs in opposition,

It is ordered, that said motion be, and the same is hereby, denied,

Dated New York, Sept. 7th, 1878.

(Signed) SAM'L BLATCHFORD.

A copy.

TIMOTHY GRIFFITH, *Clerk.*

Exhibit N 1.—J. M. D.

Circuit court of the United States, southern district of New York.

P. A. H. RENAULD ET AL.
vs.
AUGUSTUS SCHELL.

SIR: Please to take notice that the defendant's proposed bill of exceptions herein, together with your proposed amendments thereto, will be presented to his honor, Judge Blatchford, for settlement at the United States circuit court room on Friday, the 4th day Oct., inst., at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard.

New York, Oct. 3, 1878.

Yours, &c.,

STEWART L. WOODFORD,
U. S. Att'y and Att'y for Def'ts.

To ALMON W. GRISWOLD, Esq.,
Pl'ffs' Att'y.

310 Exhibit O 1.—J. M. D.

U. S. circuit court, southern district of New York.

P. A. H. RENAULD ET AL.
vs.
AUGUSTUS SCHELL.

Defendant's proposed bill of exceptions, which is hereto annexed, and plaintiffs' proposed amendments thereto, which are hereto annexed, having been presented for settlement, and Mr. Griswold, of counsel for plaintiffs, objecting to a settlement at this stage of the case, it is ordered that the matter be laid over till after the referee appointed to re-adjust plaintiffs' damages shall have made his report without prejudice to either party.

New York, Oct. 3d, 1878.

SAM'L BLATCHFORD.

Above agreed to.

STEWART L. WOODFORD,
U. S. Atty. and Deft's. Atty., S. B. C.

A. W. GRISWOLD,
Plffs.' Att'y.

Exhibit Q 1.—J. M. D.

WASHINGTON, D. C., *September* 2, 1881.

Hon. WILLIAM WINDOM,
Secretary of the Treasury:

SIR: There are thirty-one cases pending in the circuit court of
311 the United States for the southern district of New York against ex-collector Heman J. Redfield, represented by me as attorney of record, which have been examined by General Curtis and myself for the purpose of ascertaining what amounts are due to the several plaintiffs therein. We have agreed upon the several sums due in four of these cases, viz: R. C. Goodhue et al., E. H. Arnold, W. H. Fogg, O. Slate, jr., et al., in which no verdicts have been taken, amounting, on the 31st December, 1879, to $513.48, which sum, with interest at 6 per cent. upon the principal of 188\frac{55}{100}$, will be accepted in full satisfaction of the claims of the plaintiffs in those actions.

In the following fifteen cases, viz: H. M. Avery et al., L. Cramer et al., W. Clapp et al., A. T. Edgerton, H. Gudewill et al., John B. Hall, W. C. Haggerty et al., John Nicholson, J. M. Price et al., M. Thalmessinger et al., M. Maas, N. Gutman et al., R. L. Dawson et al., M. H. Maas et al., J. C. Henderson et al., in which verdicts were taken April 19 and 21, 1864, I ask payment of the sums found due, aggregating $40,534$\frac{41}{100}$, with interest at 6 per cent. upon $21,224$\frac{60}{100}$, from December 31, 1879, in full satisfaction of the above-named cases; and upon payment of the amounts due on the said nineteen cases I will discontinue the same absolutely,
312 together with the following ones, viz: L. E. Amsinck, H. M. Barklie et al., Theodore Dehon, James Allison, L. J. Levy et al., F. M. Melliss et al., C. Meletta, E. A. Mumford et al., T. Paton et al., F. W. Reimer et al., J. Seligman et al., J. W. Schmidt et al., being twelve in number.

The five cases made up in 1876, viz: H. Ackerman et al., B. Babcock et al., M. F. Henschen et al., G. B. Moorewood et al., L. P. Morton et al. I will examine and accept such sums in satisfaction of the said five cases as may be found due on this basis of compromise, which will be a final disposition of all the cases pending against Heman J. Redfield by plaintiffs represented by me as an attorney of record.

Very respectfully,

(Sd.) E. JORDAN,
Att'y for Pl'ffs.

Exhibit R 1.—J. M. D.

H. B. J.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
4320 B. *Washington, D. C., September* 10, 1881.

GENERAL N. M. CURTIS,
Care of Collector of Customs, New York:

SIR: The Department is in receipt of your two letters of the 6th instant, in regard to a compromise of the charges and commissions
313 cases represented by Edward Jordan, esq., and enclosing a letter

from him upon the subject. The offer made by Mr. Jordan appears to be as follows:

In the four (4) cases against Redfield, viz: R. C. Goodhue et al., E. H. Arnold, N. H. Fogg, O. Slate, jr., et al., in which no verdicts have been taken, computation has been made to ascertain the amount due, which is $513\frac{48}{100}$, with interest at 6 per cent. upon the principal, $\$188\frac{55}{100}$, until paid.

In 15 cases agst. Redfield, specified in the letter of Mr. Jordan, verdicts were taken April 19 and 21, 1864. He asks payment of the sum found due, aggregating $\$40,534\frac{41}{100}$, with interest at 6 per cent. upon $\$21,224\frac{60}{100}$ from December 31, 1879. Upon payment of this amount he agrees to discontinue these cases, together with twelve others against Redfield therein recited, and in the remaining five cases against Redfield, represented by him, to accept such sums in satisfaction as may be found due on this basis of compromise.

The point at issue seems to be whether interest shall be computed continuously from the date of overpayment to the date of re-payment where verdicts were rendered some years since, or whether interest shall be computed from the date of overpayment to the verdict and then interest be computed upon the consolidated sum.

Without declaring any principal upon which other cases shall be settled, the Department has to state that it accepts the offer of Mr. Jordan, and authorizes a settlement by compromise of the cases alluded to in his letter upon the terms therein indicated.

A copy of this letter will be furnished the district attorney for his information, as well as a copy of Mr. Jordan's offer.

Very respectfully,

H. P. FRENCH,
Acting Secretary.

(No enclosures.)

314 Exhibit P 1.—J. M. D.

CUSTOM-HOUSE,
New York, April 9th, 1881.

A. W. GRISWOLD, Esq.,
Plaintiffs' Attorney:

DEAR SIR: I have the honor to acknowledge the receipt of your letter of the 8th instant, requesting me to examine the charges and commission case 1623, Geo. F. W. Bartels vs. Augustus Schell.

This case is, as I am informed, before the referee for his examination and report, and I do not think it advisable to call for the papers pending his consideration of the case. There are many cases represented by you, as I understand, in which the papers are on file in the custom-house, and I shall be very glad to take such steps as it may be decided will facilitate their settlement. I am and have been willing to give the same attention to the disposition of your cases which I have to any other parties, and shall be pleased to see you at the custom-house, and arrange on a plan for taking them up. That one which will most speedily dispose of them will be most agreeable to me.

Very respectfully,

N. M. CURTIS.

315 Plaintiffs' Exhibit T 1.—J. M. D.

EXHIBIT No. 3.—*Statement of the nature and character of the claims pending against the Government By H. F. French, Assistant Secretary.*

Refunds of customs duties—Refunds of internal-revenue taxes—Informers' rewards, customs—Informers' rewards, internal revenue—Fees of district attorneys—Claims for cotton under act of May 18, 1872—Captured and abandoned property in the Court of Claims—Court of Claims—Southern Claims Commission—Claims under special statutes—Claims under act of 1849—Claims for steamboats, engines, &c.—Claims under act of 1864—Claims for property destroyed in the rebellion—Limitation of claims—Mode of proof—Ex parte evidence—Reference to Court of Claims—Appropriation.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., November 30, 1877.

To the SECRETARY OF THE TREASURY:

The claims which you have desired me to consider may be conveniently classed as follows: Refunds of customs duties; refunds of internal-revenue taxes; informers' rewards; district attorneys' fees; claims for the proceeds of cotton under the act of May 18, 1872; claims within the jurisdiction of the Court of Claims; claims within the jurisdiction of the Commissioners of Claims; claims under the act of 1849 for horses, &c., and for steamboats and other vessels; claims for stores and supplies under the act of July 4, 1864; and claims for property destroyed in the rebellion.

Appropriations for the Life-Saving Service, the Revenue-Cutter Service, the Light-House establishment, the Coast Survey, the Bureau of Engraving and Printing, the erection and repair of public buildings throughout the country, and many others, are placed by law in charge of the Secretary of the Treasury, and many claims for his consideration are constantly
316 arising from them. But such claims are not of a nature to be classified, or to furnish precedents for the future, and, therefore, will not be further discussed.

REFUNDS OF CUSTOMS DUTIES.

Section 3012½, Revised Statutes, provides that—

"Whenever it shall be shown to the satisfaction of the Secretary of the Treasury that, in any case of unascertained duties or duties or other moneys paid under protest and appeal, as hereinbefore provided, more moneys has been paid to the collector, or person acting as such, that the law requires should have been paid, the Secretary of the Treasury shall draw his warrant upon the Treasurer in favor of the person entitled to the overpayment, directing the Treasurer to refund the same out of any money in the Treasury not otherwise appropriated."

Under the foregoing section, and the appropriation, found among the permanent annual appropriations, "to repay to importers the excess of deposits for unascertained duties, or duties or other moneys paid under protest," the greater part of the refunds of customs duties are made.

The refunding of duties under some special acts and resolutions will be considered in their proper place.

Charges and commissions cases.—The most important class of cases to be considered under the head of "refunds of customs duties," on account of the amount involved, the long pendency of the suits, and the diverse opinions which have prevailed among the Secretaries of the Treasury and

law officers of the Government, are the cases known as the "charges and commissions cases."

Those cases arose upon an act which was repealed in 1864. More than $2,000,000 have been already paid on account of them for principal, interest, and costs, and upon the best estimates which can now be obtained probably as much more is involved as has already been paid. The papers respecting them are very voluminous. A statement prepared in the office of the Solicitor of the Treasury, dated August 14, 1876, gives a condensed history of these cases to its date.

"By the act of March 3, 1851, collectors of customs were required to cause the actual market value or wholesale price of goods imported into the United States to be appraised, and to add to such value or price all costs and charges except insurance, including in every case a charge for commissions at the usual rates, as the true value thereof at the port of entry. This act remained in force until June 30, 1864. During this time, under the act in question, the Treasury Department required to be added to the value of the goods imported not less than two and one-half per cent. commissions. It also required to be added all charges, except insurance, which had accrued prior to the time the goods left the last port or place in the foreign country, including the cost of transportation inland or coastwise, whether such place of setting out and place of final departure were in the same or different countries. It also required in cases where goods had been purchased to be delivered free on board, that is, purchased to be delivered on board ship at a stipulated price and free of all charges not embraced in such price, such sums as were the usual charges in the countries where the goods were purchased, differing in respect to goods coming from different countries.

"With regard to these exactions, the importers claimed, first, that they were required to add only the usual commissions, whether greater or less than 2½ per cent.; second, that only such charges should be added as accrued before the merchandise set out on a determined destination to the United States, and that in cases where goods were purchased "free on board," nothing on account of charges could be required to be added.

"To the exactions thus made by the Treasury Department the importers protested, relying in making their protests on what is termed "prospective protests," that is to say, protests against particular decisions with a clause declaring it to be the desire and intention of the importer that such protests shall apply to all future cases of like character. It was claimed by the importer that a protest of this character filed with one collector of customs was valid against his successor in office.

"Having protested, however, in this way, no appeal was made to the Secretary from the decision of the collector adverse to the claim; but suit was begun without making such appeal.

"Under the construction placed upon this act of 1851 by the Treasury Department a large number of suits, now known as "the charges
317 and commissions suits," were brought against the collectors of customs at the port of New York to recover the duties claimed for the reasons given to have been illegally exacted, the amount of which duties aggregated over two millions of dollars."

One of these suits, viz, Hutton vs. Schell, was tried before the circuit court for the southern district of New York in 1868, in which all the

questions to which I have alluded were argued and decided adversely to the claim of the United States. (6 Blatchford, 48.)

In the case of Gibbs vs. Washington, tried in the circuit court of California in 1858, the court held that charges for transportation of goods from the interior of the country by railroad or water carriage, incurred prior to the time of exportation, cannot be added to the value of the goods under the act of March 3, 1851. (1 McAllister, 430.)

"A Treasury circular was issued on the 21st May, 1863, while Mr. Chase was Secretary of the Treasury, concurring in the decisions of the courts, viz: that charges for transportation of goods from the interior by railroad or water carriage were not to be added for the purpose of establishing their dutiable value.

"The circular also stated that it had been decided that the usual and legal rate of commissions on merchandise from Great Britian was 1½ per cent. from Continental Europe, except Paris 2 per cent., and that the Department concurred therein.

"The action of the Treasury Department seems to have been in accordance with the rulings of the court. It has in no instance directed an appeal to be taken to the Supreme Court on any of the questions arising under this act; and different Secretaries have from time to time since the date of the circular referred to, ordered refunds of duties exacted, such refunds amounting in the aggregate to about one million seven hundred thousand dollars.

"While, however, so large an amount has been refunded, there still remains over five hundred suits undetermined, involving over five hundred thousand dollars.

"On the 11th of May, 1874, the United States (at New York) attorney, Mr. Bliss, in a report to the Secretary of the Treasury, in which he expresses himself with some earnestness in the manner in which the various questions arising in these case have been disposed of by the courts and the Department, requests that he may be authorized to take writs of error in a sufficient number of cases to present fairly the points involved to the proper court.

"In a subsequent letter of June 4, 1874, in reply to one from the Secretary asking him to report what particular questions he desired to present, he answered that the ones which seemed specially important were:

"1. The entire question of what are duitable charges under the act of March 3, 1851.

"2. When goods have been invoiced free on board it has been the practice since Benkard vs. Schell to refund duties paid on charges added by importers by compulsion to make market value. This point should be reviewed.

"3. The sufficiency of a continuous or a prospective protest should be considered. If good, to what extent.

"4. The question whether a protest addressed to one collector is applicable to his successor.

"5. The necessity of an appeal under the act of 1851.

"On the 10th of June following the Secretary of the Treasury referred the matter to the Attorney-General, and requested to be informed whether the points of law raised by the district attorney were of sufficient importance to justify the Department in suing out a writ of error to obtain judgment of the Supreme Court in regard thereto.

"On the 25th following the Attorney-General replied, stating substantially that he understood that the question was interesting to the Government only so far as regards transactions now passed; that while some of the principles established by former Secretaries, as well as by the circuit court, might well in former years have been brought by the Government before the Supreme Court, 'the propriety of doing so at present makes a very different question, inasmuch as these principles have been acquiesced in for year after year, and have formed the basis upon which vast amounts of business have been transacted in good faith between the Government on one side and importers on the other; the more so, that as said above, under the recent change of legislation the reversal of that series of decisions is not to affect future business.

"The question as to what charges and commissions appraisers were, before the statute of June 30, 1864, to include in ascertaining the dutiable value of goods imported is somewhat a different one. If that question had not been set at rest for the future by the above legislation (13 Stat., 217, sec. 24) there might be no objection to have it reconsidered. It was, under the previous statute, debatable, and some time since would have justfied officers of the Government in bringing it before the Supreme Court; as it is, however, the vast majority of the cases presenting the
318 question has uniformly been decided by the Secretaries and by the courts adversely to the Government. It is not improbable that such decisions were correct. At all events it is hardly seemly to question their application to that comparatively small remnant of cases upon which the old law still operates.

"On receipt of this dicision, the Secretary of the Treasury wrote to the United States attorney concurring therein, and directed writs of error not to be sued out if plaintiffs would stipulate in writing to abandon the point that protests filed with one collector were binding on his successor in office.

"In August, 1874, such stipulation was filed and all the suits sent to a referee; but in May following the United States attorney was directed to have the reference vacated and questions involved in them taken to the Supreme Court on the ground, as stated by the Secretary, that his concurrence in the opinion of the Attorney-General had been based on representations made to him by counsel of plaintiffs that there was but a remnant of the cases left, and these had gone to judgment, which was not the fact.

"The attempt to vacate the reference was resisted by plaintiffs on the ground that the Government could not in good faith appeal after the letter of the Secretary directing no appeal to be taken, if the stipulation referred to was filed. The court therefore refused to vacate the order, and no appeal or writ of error has yet been taken in any of the cases."

The foregoing statement was prepared by the Solicitor of the Treasury by an order of Secretary Bristow, dated June 2, 1876, but was not acted upon by him.

Soon after Secretary Morrill assumed charge of the Treasury Department the whole subject was brought up for his consideration, in August, 1876. I had the honor to report to the Secretary on the 24th of August, 1876, upon the propriety of submitting the questions arising in the cases to the Attorney-General, and upon that report the Secretary declined so to refer them.

The reasons upon which his decision was based were that all the suits

were under reference by consent, and it was necessary to vacate the decree of reference before they could be opened for trial. The court had refused, upon motion of the counsel for the Government, to vacate the orders of reference.

The decisions of the courts and the acquiescence of the Department in them, it was thought, ought not, at this late time, to be disturbed. It seemed that good faith required that an agreement for the disposition of the suits deliberately entered into by the Government should not be violated because it appeared that the number of suits and the amount in controversy were greater than the representatives of the Government supposed when they entered into the agreement.

It did not appear that, since the opinion of the Attorney-General above cited, any opinion of any court had been given adversely to the views of the claimants upon any point, and it did appear that an opinion of the Supreme Court, in the case of Barney vs. Watson et al. (2 Otto, 449), affirming the opinion of the circuit court, had been given upon two points in favor of the claimants, to wit, that the act of 1857, requiring appeals to the Secretary of the Treasury in certain cases does not apply to such cases as these under consideration, and, secondly, that a protest at any time before payment is sufficient; the act of February 26, 1845, and not the act of 1857, being applicable to them.

Nothing seems to have occurred since the opinion of the Department of Justice was given that could lead the Secretary to suppose that the views of its officers could have been changed in favor of the Government.

Upon this view of the matter the following instructions were given to the Solicitor of the Treasury by the Secretary, September 26, 1876:

"In the matter of the suits known as "charges and commissions cases," the Solicitor of the Treasury is directed to instruct the district attorney of the southern district of New York that this Department with-
319 draws the instructions heretofore given to him to carry to the Supreme Court by appeal, writs of error, or otherwise, such cases upon the following questions:

"1. Whether, under the tariff act of March 3, 1851, it was legal for the collector of customs to add to the foreign cost or value of merchandise commissions greater than the usual rates paid in the places from whence the importation was made.

"2. Whether, under the same law, it was legal to add the cost of transportation, inland or coastwise, from the place whence the merchandise set out, on a declared destination, to the United States, to the last place of shipment.

"3. Whether, under the act, charges could be legally added in cases where the merchandise had been purchased to be delivered 'free on board,' and the charges were, as claimed by the importers, embraced in the price paid.

"4. Whether a 'prospective protest,' or, in other words, a protest in advance, was sufficient to save the right of importers in cases where such additions as those specified in the foregoing paragraphs were made.

"5. Whether, after the passage of the act of March 3, 1857, it was incumbent on the importer, in cases of additions being made or required by the collector, to appeal to the Secretary of the Treasury.

"As to any other questions arising in said cases, the Department does not intend at this time to give instructions."

Under these instructions, cases proceeded before the referees and judgments to the amount of about ——— were rendered upon their report, and were paid: the debt, under section 3012½, R. S., "out of any money in the Treasury not otherwise appropriated"; the cost and interest, under section 3687, R. S., out of what is termed a permanent annual appropriation "for the expenses of collecting revenues and customs."

Upon the accession of the present Secretary, the whole subject was again brought under consideration, and the payment of the judgments rendered in the cases suspended for want of any appropriation out of which the same could, in the opinion of the Secretary, be legally paid. His decision of April 20, 1877, in relation to the use of appropriations for the payment of accrued claims is held to apply to the judgments in these cases.

Doubts having been suggested whether the proceedings in the courts and before the referees had been regular and in conformity to law, a thorough investigation by the Department has been attempted.

Learning from the district attorneys in the two districts in New York, in the courts of which these suits are pending, that no accurate information could, within a reasonable time, be given by the officers of the courts as to the number of suits in which judgments had been rendered, nor of those still pending, nor of the amount already paid or which would probably be recovered in the pending suits, a special agent of the Department, N. W. Bingham, esq., was directed to make an investigation and obtain the desired information. He detailed Special Inspector J. W. Davis to make the required examination. Mr. Davis has been aided by a clerk, Mr. W. C. Tompkins, detailed for the purpose. After several weeks spent at New York in examination of the records in the custom-house, as well as in the court, and after conference with the district attorney and special counsel for the Government, and also with the counsel for the plaintiffs, the inspector has made a report sufficiently accurate for present purposes.

Upon the first question proposed for investigation the inspector reports:

"As to whether protests were duly lodged at the custom-house and filed with each entry covered by these suits within the time prescribed by law, it is admitted by the attorneys of the plaintiffs that the protests were not filed with each entry; but they rely upon the general protest filed with the first entry as to which they make claim, and made to apply to it and also to all future entries. * * * I have little doubt but that a protest will be found upon one of the early entries of each claimant.

There is, however, no record or other means of determining the
320 date at which it was prefixed. * * * From the admissions of the attorneys, no protests or appeals were made as to the entries subsequent to March 3,1857, such as were required by the act of that date."

As to this point, it should be borne in mind that in Hutton vs. Schell (6 Blatchford, p. 48) it was held that prospective protests under the act of March 3, 1857, may be valid. In that case the form used was as follows:

"You are hereby notified that we desire and intend this protest to apply to all future and similar importations made by us."

The court cited several cases in support of the doctrine there laid down.

In the very recent case of Barney vs. Watson (2 Otto, p. 449), it was decided that the act of February 26, 1845, prescribing the time and manner of making protest to a collector of customs in cases therein mentioned continued in force until the passage of the act of June 30, 1864,

and that the act of March 3, 1857, does not apply to the class of cases which we are now considering. That act required a protest within ten days after entry and an appeal within thirty days, whereas under the act of 1845 it was sufficient that protest should be made in writing at or before the payment of duties.

The act of 1857 is held in Barney vs. Watson not to relate to a decision upon the rate and amount of the duties to be charged, but only to the decision of the collector whether the goods were on the free list or not. (2 Otto, p. 453.)

The inspector next reports upon the second question, "whether the several suits were brought within the six years from the dates of payment of duty upon such charges and commissions."

He says:

"A large proportion of the suits were not brought for several years after the date of the last entry, and if the statute of limitations had been pleaded, most, if not all, of the items would have been barred."

Inasmuch as, under the decision of the Supreme Court in Barney vs. Watson, these suits are governed by the act of 1845, they are not barred by the limitations as to protest and appeal contained in the act of 1857. Being actions against the collector personally, they would be subject to the statute of limitations of the State of New York where they are pending. It is probably too late to effectually raise any question upon this point.

The third question investigated by the inspector relates to "the number of such suits still pending, the titles, amounts involved, and date of commencement of suit to be given in detail in each case."

The inspector has presented a tabulated list, marked A, "showing the number of suits in the charges and commissions cases in New York, with the date of action, names of plaintiffs and defendants, the collectors and district attorneys, docket-number, date of verdict or of reference, name of the referee, and the date of payment; also of the cases unsettled."

In Exhibit B he gives copies of orders of court, and of reference, and of other documents relating thereto.

In Exhibit C he gives the amount of actual refunds in these cases from September 13, 1855, to February 5, 1877.

Exhibit D contains a list of the cases adjusted but not yet paid.

As these papers are very voluminous, it is sufficient to refer to them and give their results.

321 The inspector states that many of the cases, after judgment and satisfaction, have been re-opened, and upon re-examination further judgments have been rendered. Hon. Edwards Pierrepont and John I. Davenport, esq., are the officers to whom all these cases, except a few which have been referred to the collector of the port, have been committed as referees. Upon the report of the referee judgment was entered for the amount found by him to be due, with the costs of court and referee's compensation added, the judge in each case determining the amount of the referee's fees. The amounts were then certified and forwarded by the collector to the department for payment.

The inspector has made examination to ascertain whether in any of the cases a claim has been twice paid. He is satisfied that this has not been the case, except in one instance, which he recommends to be carefully ex-

amined. He refers to the cases of Mitchell and another vs. Redfield, where there appear to have been two refunds. An examination at the department shows that these judgments were for distinct causes of action.

As to the whole number of cases which have been presented, the inspector reports that 65 cases were settled prior to 1860 without suit; that the whole number of suits brought is 1,406; the number pending at present is 776, of which 36 are not pressed by the claimants; the number paid is 723, of which 28 were re-opened and paid; leaving of the original cases paid 695. In these 695 cases 723 payments were made, amounting to $2,035,172.20. Deducting six payments in extraordinary cases, it is found that the average of the paid claims has been about $2,640.

Exhibit D contains a list of claims now before the department, 12 in all, amounting to $42,201.71, or about $3,500 each. On the same sheet is a list of cases made up, but not yet forwarded to the department, 12 in number, amounting to $27,917.12, or about $2,300 each.

Assuming that the pending unsettled cases would average about $2,900 each, they would amount in all to $1,885,000. The accumulating interest and costs are, of course, greater upon the suits pending than upon those that were adjusted long ago.

This method of estimating the probable amount which may be recovered in the pending suits is very uncertain, but is the best that presented itself to the mind of the inspector.

The claims as they appear upon the papers are probably much larger than they would appear when adjusted by a verdict or by a reference; and it is impossible to gain any more accurate information as to the amount than appears above.

The inspector reports that the district attorneys, upon the assumption that only 400 cases were pending, estimated that about $900,000 would be needed to satisfy them.

Certified statements of claims, amounting to $39,213.99, are now on file in this department unpaid for want of an appropriation, and it is reported that other judgments to the amount of $27,917.12 have been already rendered, certificates of which have not yet been forwarded.

Suits now pending.—It is understood that the suits now pending in both the districts of New York were originally commenced in the State courts; the act of February 26, 1845, vol. 5, p. 727, being construed to give a common-law remedy in these cases. All the suits were brought by A. W. Griswold and Alfred Douglass, as attorneys, in the State courts. They acted each in his separate class of suits, and have not acted, it is said, even in harmony in conducting them. Mr. Griswold still represents his cases. Douglass died about a year since, and is represented by E. D. Smith, esq., formerly district attorney of the southern district of New York.

322 All the suits, except 64, were transferred from the State courts to the circuit court for the southern district of New York. These 64 cases, which are all against Ex-Collector Redfield, were transferred to the northern district, where they are still pending, as Mr. Redfield had his residence within that district. The situation of these 64 cases will be considered in another place.

Causes of delay in these cases.—Most of these cases have been pending sixteen or seventeen years, and the inquiry is at once suggested, why such delay should have occurred.

It is well understood that the docket of the court for the southern district of New York has been long crowded with cases. But this is no reason for such delay as has occurred in these cases, because, as will be seen, the cases do not occupy much time in court, but are investigated before referees, and the reports of referees only are acted upon by the court.

If we look at the form of proceeding, it will be seen that although verdicts are rendered in the cases, very little progress toward the conclusion of the cases is made by the trials in court. For illustration, we will look at the trial of H. E. Gillelan et al. vs. H. J. Redfield, before Judge Shipman on the 2d of May, 1861. The jury was impaneled and two witnesses were sworn, when, as the record says, by consent of counsel the jury found a verdict for the plaintiffs for the amount, with interest, of the difference between duties paid under protest on commisions at $2\frac{1}{2}$ per cent. and such duties if levied on commissions at 2 per cent. on all importations, specified in the bill of particulars, from the Continent of Europe, except Paris, and also for the difference between duties on $2\frac{1}{2}$ per cent. commission and such duties if levied on $1\frac{1}{2}$ per cent. commission on importations from Great Britain, except Yorkshire, the amount to be adjusted by the collector of customs at New York, and to be reported to the clerk of this court.

It will be observed that all importations specified in the bill of particulars are included in the finding, and these were often very numerous.

It will be seen that the whole labor of adjustment was thus referred to the collector of customs, who was to report his results to the clerk of the court. For some reason, which does not appear, this practice was afterward changed, and the cases were sent to referees, who in theory made the examinations, but who in fact depended upon the custom-house officers for their results, since it is understood that nowhere else except at the custom-house could the data for these results be obtained. The form of procedure involved, necessarily, considerable time, but does not by any means account for the delay of sixteen or seventeen years. The delay may be more properly accounted for by the changes in the district attorney's office and the changes of officers and policy in the Treasury Department. An examination shows that since October 4, 1856, the date of Secretary Guthrie's order above cited in these cases, there have been twelve Secretaries of the Treasury, fourteen Attorneys-General, and nine district attorneys of the southern district of New York. It would not be strange if there has been some diversity of views or even some want of intelligent action in the conduct of the defense of these suits.

It is noticeable in this connection that, while at the accession of each new Secretary of the Treasury and of each new district attorney to office a new investigation has become necessary to their understanding of these cases, in some instances the retiring officers of the Government who had been educated in these cases at the Government expense, have been at once retained as counsel for the plaintiffs. One Attorney-General, one
323 Solicitor of the Treasury, one district attorney for the southern district of New York, and one special agent are illustrations of this statement. It will be readily seen that the Department must be peculiarly embarrassed by finding itself suddenly opposed by its own officers as counsel for the claimants.

The records show that there has been a continual controversy as to stipulations and agreements which, the plaintiffs have claimed, have been from time to time made by this Department.

The act of 1839, which, with additional limitations, is embodied in section 3012½ Revised Statutes, provided that when the Secretary is satisfied that more money has been received by the collector than should have been received for customs duties, he shall refund the same; and in most classes of refund cases it is insisted that the Secretary, after a principle governing a class of cases had been settled in the courts, to save delay and expenses has adjusted the other cases falling within the principle, and that assurances were given by the Department in these cases that adjustments would be made without suit after the principles of law had thus been settled. To this claim, which has been pressed as an equitable one upon every district attorney, upon every Solicitor of the Treasury, and upon every Secretary of the Treasury upon his accession to office, may be attributed a greater part of the delay which has occurred.

It would seem that the plaintiffs could have no interest in delaying the judgments in their favor; and it is evident that the greater the delay has been, the more difficult has it been for new officers of the Department to gain a clear apprehension of the situation of the cases.

Fraudulent protests.—It is suggested, by one of the officers who has conducted the investigation at New York, that protests may have been fraudulently filed after the lapse of the proper time for filing them.

It is understood that the want of timely and proper protest goes to the jurisdiction of the court, and must, therefore, become a question of fact in each case. A general suggestion that false protests may have been filed is only valuable for the purpose of calling the attention of the Government counsel to the necessity of strict proof of such protest in the trial of each case. The fact whether there was or was not such protest must be tried in court like any other material fact, and the opinion of any officer of this Department can avail nothing in the trial of that issue. The fact stated by the officer who has reported upon the points will not go far toward rendering it probable that any such falsification of the record of the court could be proved.

Interest.—The claims in these cases, being against the collector personally, bear the New York rate of interest, 7 per cent.

It has been suggested by one of the officers that interest has been improperly compounded by adding to the report of the referee, which includes interest and costs, interest to the time of the judgment, and then again upon the full amount of such judgment to the time of payment. These are matters of detail which must be directed by the court under the supervision of the counsel for Government.

Costs.—It has already been observed that the verdicts, one of which has been cited, were rendered for the amount to be adjusted by the collector of customs and to be reported to the clerk of the court. There seems no good reason why this practice should not have been continued. But it appears that in a great majority of cases a referee has been appointed, generally Hon. Edwards Pierrepont or John I. Davenport, esq.; and in such cases the referee's fees and expenses of making up the report are included in the judgment and paid by the Government.

Nearly all the pending cases have been referred to Mr. Davenport.

324 Plaintiff's Exhibit S 1.—J. M. D.

EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
Mar. 20, 1861	W. Loeschigk & Co	$2,288.68	Apr. 6, 1861	294
Apr. 6, 1861	C. G. Clark & Co	6,043.97	Apr. 24, 1861	197
	T. Passavant et al	2,905.88	Apr. 30, 1861	363
Apr. 20, 1861	Guillaume, F., & Co	1,707.58	May 15, 1861	357
May 13, 1861	Ira Bliss	185.08	June 7, 1861	608
May 17, 1861	H. Gourd et al	488.54	....do	293
May 18, 1861	F. A. Spies et al ....Bronson	1,031.59	....do	291
	Do	507.05	....do	360
July 1, 1861	W. W. Gilbert	182.23	July 17, 1861	474
	Schnabel Bros	58.80	Sept. 2, 1861	
	Graydon Swaerurch & Co	183.29	....do	
July 15, 1861	C. A. Davis et al	21,086.72	Aug. 22, 1861	485
June 26, 1861	I. W. Schmidt & Co	81.33	Oct. 16, 1861	
Aug. 6, 1861	E. A. Oelrick & Co. (see verdict of July 16, 1861, page 6, Exhibit A).	691.43 227.44	Aug. 28, 1861 ... do	
Aug. 23, 1861	W. W. Gilbert et al	15,355.35	Sept. 6, 1861	473
Sept. 4, 1861	John C. Brown	873.89	Sept. 23, 1861	70
	Do	240.12	....do	69
Sept. 10, 1861	Mitchell & Pott	4,312.16	Oct. 10, 1861	555
Sept. 20, 1861	Do	2,477.32	Oct. 19, 1861	
Sept. 28, 1861	J. C. Brown & Co	1,600.55	....do	68
	Joseph Fischer & Co	4,556.52	Oct. 21, 1861	No suit.
Nov. 9, 1861	B. Andrae & Co	2,882.24	Nov. 29, 1861	547
Nov. 16, 1861	J. B. Wellington & Co	1,771.75	Dec. 9, 1861	45
Nov. 21, 1861	J. A. Fischer & Co	32.94	May 23, 1862	
Dec. 13, 1861	W. Brunner & Co	4,362.83	Dec. 30, 1861	310
Dec. 19, 1861	H. Moulin	316.80	May 26, 1862	
Nov. 26, 1861	Sampson & Baldwin	1,085.16	Mar. 24, 1862	
		87,420.38		
Jan. 17, 1862	F. Girnbernat et al	2,216.58	Jan. 31, 1862	418
Jan. 25, 1862	B. Babcock et al	2,740.51	Apr. 16, 1862	292
Jan. 30, 1862	Faushave, M. & T	6,765.78	... do	
Feb. 21, 1862	M. E. Gillelan	1,062.12	Mar. 31, 1862	526
Mar. 3, 1862	Vose, Livingstone & Co	770.70	Sept. 5, 1862	
Apr. 5, 1862	George Ashton & Co	3,939.48	Apr. 21, 1862	423
Apr. 14, 1862	J. Bowman & Co	2,739.06	Apr. 26, 1862	839
Apr. 17, 1862	Keneys & Sampson	84.76	July 3, 1862	
Apr. 23, 1862	R. Irvin & Co	2,183.86	May 3, 1862	561
Apr. 25, 1862	B. Babcock & Co	920.65	May 10, 1862	680
Apr. 30, 1862	Do	850.54	do	681
May 24, 1862	B. Babcock	531.56	July 1, 1862	714
June 10, 1862	R. Irvin	273.84	July 19, 1862	
June 11, 1862	Des Arts & Heuson	184.13	Oct. 23, 1862	
July 19, 1862	Benkard & Hutton	2,321.22	Aug. 18, 1862	732
	Do	1,054.72	do	744
July 30, 1862	F. Butterfield et al	3,392.87	Sept. 1, 1862	711
Aug. 9, 1862	C. J. Stedman	560.24	Sept. 2, 1862	688
Aug. 22, 1862	The Cleveland and Pittsburgh Railroad	4,848.97	Sept. 23, 1862	682
Sept. 30, 1862	S. Crooks	5,001.38	Oct. 21, 1862	488
Oct. 23, 1862	L. S. Haskell et al ....Redfield	270.70	Nov 21, 1862	678
	L. S. Haskell et al ....Schell	473.25	do	673
Oct. 17, 1862	F. Butterfield....Redfield	4,036.62	Nov. 19, 1862	710
		47,223.54		
Jan. 7, 1863	James Tinker ....Schell	4,910.86	Jan. 29, 1863	885
	Do ....Barney	1,212.42	... do	883
Jan. 10, 1863	F. Butterfield ....Schell	7,143.17	Feb. 11, 1863	717
	J. Cameron ....Redfield	671.70	Jan. 30, 1863	727
Jan. 13, 1863	J. Bowman ....Maxwell	5,150.19	Feb. 13, 1863	849
	Do ....Redfield	6,541.30	....do	832
Jan. 14, 1863	F. R. Fowler ....Schell	199.74	Feb. 4, 1863	672
Jan. 21, 1863	Do ....Redfield	867.33	....do	676
Feb. 16, 1863	J. Bowman, J. B. Johnston & Co ....Schell	6,875.12	Mar. 11, 1863	851
Feb. 19, 1863	Claflin, M. & Co ....Redfield	5,502.52	Mar. 13, 1863	733
Feb. 27, 1863	P. Chateaux, jr ....Schell	1,363.14	Mar. 20, 1863	768
Mar. 6, 1863	R. A. & G. H. Withaus....Redfield	944.74	....do	738
Mar. 9, 1863	C. Augrave....Schell	1,017.09	Apr. 1, 1863	724
	Morton & Grinnel....Redfield	3,941.43	Mar. 28, 1863	762
	Clapp, Kent & B ....do	1,793.48	... do	730
	C. Augrave....do	980.96	Apr. 11, 1863	725
Mar. 13, 1863	Butt, Black & Guild....do	1,494.74	Apr. 2, 1863	728

325 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collector's and district attorney's docket number.
Mar. 14, 1863	Naylor & Co., W. L. King ..... Redfield..	$1, 857. 37	Mar. 31, 1863	47
Mar. 16, 1863	P. Chateaux, jr ..... do....	15, 363. 60	July 31, 1863	476
Mar. 17, 1863	S. Crookes ..... do....	6, 132. 37	Apr. 17, 1863	480
Mar. 25, 1863	Lewis Bros ..... do....	2, 964. 48	Apr. 15, 1863	545
Apr. 2, 1863	Spies, Christ & Jay ..... Schell..	613. 62	... do	670
Apr. 3, 1863	Charles Rhind ..... Redfield..	564. 21	Apr. 20, 1863	837
	Butt, Black & Guild ..... Schell..	2, 783. 25	... do	751
Apr. 4, 1863	Christ, Jay & Hess ..... do....	1, 524. 35	... do	252
	H. B. Claflin ..... do....	5, 964. 98	May 1, 1863	745
Apr. 8, 1863	L. O. Wilson & Co ..... Redfield..	2, 223. 64	... do	788
Apr. 22, 1863	Sturgis, Shaw & Co ..... do ...	5, 645. 84	July 31, 1863	764
Apr. 25, 1863	Raymond & Fullerton ..... Maxwell..	21, 815. 96	May 7, 1863	487
	Sturgis, Shaw & Co ..... Schell..	5, 058. 32	Aug. 14, 1863	825
Apr. 27, 1863	J. B. Johnston & Co ..... Barney..	1, 090. 88	May 28, 1863	948
	A. Gibon ..... Redfield..	4, 372. 80	Aug. 22, 1863	766
May 5, 1863	Clark & Jessup ..... Bronson..	14, 907. 35	June 10, 1863	884
	P. Chateaux, jr., & Co ..... do ...	6, 067. 62	... do	557
	Charles J. Steadman ..... do....	1, 072. 26	... do	838
	Raymond & Fullerton ..... Redfield..	7, 843. 66	.. do .	559
May 5, 1863	S. Crookes ..... Bronson..	7, 486. 04	June 10, 1863	482
	Raymond & Fullerton ..... do....	8, 700. 08	... do	560
May 18, 1863	A. Iselin ..... Redfield..	1, 685. 98	July 31, 1863	513
May 22, 1863	Charles Vyse & Co ..... Schell..	6, 237. 47	July 24, 1863	671
June 9, 1863	Thomas Slocumb ..... Redfield..	3, 159. 72	Aug. 22, 1863	797
	Theo. Dehon ..... Schell..	906. 72	July 11, 1863	.....
	Do ..... Redfield..	1, 760. 77	.....	592
June 10, 1863	T. Slocum & Co., Stowell ..... Schell..	4, 528. 51	Aug. 29, 1863	798
June 16, 1863	M. H. Cashman ..... Redfield..	1, 499. 57	June 26, 1863	567
July 3, 1863	W. Brandt & Co ..... do ...	4, 746. 09	Aug. 29, 1863	729
July 14, 1863	L. P. Morton ..... Schell..	641. 57	Aug. 21, 1863	1030
July 24, 1863	W. Brandt & Co ..... do....	3, 274. 80	Aug. 22, 1863	743
	W. M. Cashman ..... do....	938. 32	do	516
July 28, 1863	E. H. Jacot ..... Redfield..	1, 236. 24	Aug. 25, 1863	612
Sept. 2, 1863	V. Barsalon ..... Schell..	2, 250. 06	Jan. 11, 1864	510
Sept. 15, 1863	L. P. Morton ..... do....	3, 946. 54	Oct. 12, 1863	1034
Oct. 10, 1863	P. A. H. Renauld et al ..... do....	10, 890. 56	Dec. 5, 1863	514
Oct. 16, 1863	Henry Meyer et al ..... do....	382. 04	Nov. 6, 1863	893
Oct. 17, 1863	C. Payen et al. ..... do....	901. 17	Nov. 6, 1863	529
Oct. 26, 1863	Auffmordt et al., G. Hersenberg ..... do....	510. 58	Nov. 17, 1863	828
	Passavant et al ..... do....	1, 299. 55	Dec. 5, 1863	532
Nov. 5, 1863	Baumdahl et al ..... do ..	2, 723. 43	Jan. 30, 1864	941
	John Syz et al. ..... do ...	1, 116. 16	Nov. 28, 1863	517
Nov. 10, 1863	M. Maas. ..... Redfield..	392. 93	Nov. 30, 1863	789
Nov. 12, 1863	E. H. Jacot ..... Schell..	173. 44	Dec. 9, 1863	1408
Nov. 13, 1863	H. Scherndorff ..... do....	549. 40	Nov. 10, 1863	827
	Schulten & Hurd ..... do....	1, 404. 37	Jan. 11, 1864	1065
Dec. 18, 1863	M. Maas ..... do....	528. 54	Jan. 28, 1864	906
	H. E. Gillelan ..... do....	2, 776. 55	Feb. 5, 1864	526
	S. Guillaume ..... do....	2, 022. 42	Feb. 9, 1864	531
		237, 146. 11		
Jan. 18, 1864	W. Watson ..... Redfield..	5, 703. 27	Feb. 22, 1864	734
Jan. 19, 1864	M. Mitchell ..... do....	567. 42	Feb. 13, 1864	754
	A. Iselin et al ..... Schell..	1, 935. 98	... do	653
	E. B. Strange et al. ..... Redfield..	379. 79	... do	353
Jan. 27, 1864	W. Watson et al. ..... Schell..	6, 303. 53	Feb. 18, 1864	748
	E. B. Strange ..... Redfield..	272. 49	Feb. 3, 1864	349
Feb. 22, 1864	G. H. Stewart et al. ..... do....	910. 34	Mar. 16, 1864	861
	P. A. H. Renauld ..... do....	10, 682. 95	Apr. 7, 1864	566
Mar. 4, 1864	Geo. A. Stewart et al. ..... Schell..	2, 331. 49	Apr. 11, 1864	881
	J. A. Henderson ..... do....	1, 557. 29	Apr. 4, 1864	1234
Mar. 9, 1864	G. F. Heye ..... Redfield..	462. 99	Apr. 1, 1864	930
Mar. 19, 1864	J. H. Massett ..... Maxwell..	11, 742. 92	Apr. 21, 1864	484
Mar. 31, 1864	Wellington Clapp et al ..... Schell..	605. 76	... do	746
Apr. 12, 1864	G. G. Sampson ..... do....	8, 401. 77	June 2, 1864	719
Apr. 19, 1864	G. D. Parish ..... do....	1, 932. 88	June 10, 1864	880
	Do ..... Redfield..	165. 82	... do	863
	V. Thirion ..... Schell..	2, 145. 14	May 28, 1864	1381
Apr. 25, 1864	Warren Carter et al. ..... Redfield..	652. 75	June 10, 1864	791
Apr. 29, 1864	J. Goodband ..... do....	638. 42	... do	760
	A. Lachaise et al ..... do....	8, 124. 86	... do ...	354
May 16, 1864	J. H. Hardt et al. ..... do....	1, 401. 20	June 7, 1864	929
May 26, 1864	Thomas Fielding et al. ..... do....	359. 54	June 18, 1864	816

326 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
July 8, 1864	F. Victor et al ..... Redfield..	$1,041.63	Aug. 4, 1864	927
	H. Strusberg et al ..... Schell..	2,422.73	Aug. 5, 1864	942
	W. Lattimer et al ..... Redfield..	8,687.25	Aug. 15, 1864	364
	Thomas Fielding et al ..... Schell..	491.36	Aug. 1, 1864	901
	E. Robins ..... Redfield..	389.79	Aug. 1, 1864	763
	J. B. Hall ..... do ..	223.61	Aug. 1, 1864	803
July 9, 1864	J. Lord ..... Schell..	1,078.59	Aug. 15, 1864	946
	J. Houldsworth et al ..... do	1,172.31	Aug. 12, 1864	750
	J. B. Hall et al ..... do	704.16	...do	899
July 29, 1864	C. F. Dambmann ..... Redfield..	6,911.15	Nov. 17, 1864	348
Aug. 28, 1864	W. M. Bliss ..... do ..	2,213.18	Sept. 14, 1864	808
	G. B. Reise et al ..... Schell..	906.66	....do	899
Sept. 3, 1864	R. Nicol ..... do	1,023.47	Sept. 22, 1864	752
	W. M. Gawtry ..... do ..	813.85	..do	918
Oct. 6, 1864	C. G. Bour et al ..... Redfield..	5,025.51	Nov. 14, 1864	356
Oct. 8, 1864	F. Butterfield et al ..... Schell..	1,982.33	Oct. 28, 1864	718
	G. B. Reise et al ..... Redfield..	346.55	Oct. 21, 1864	904
	Platt & Bro ..... do	214.07	Oct. 21, 1864	795
	Robert Nicol ..... do	396.65	Oct. 21, 1864	731
Oct. 11, 1864	H. Mouhn ..... Schell..	1,045.53	Oct. 28, 1864	1617
Oct. 24, 1864	C. Dord et al ..... do ..	5,762.05	Dec. 1, 1864	1236
Nov. 7, 1864	H. G. Ely et al ..... Redfield..	561.45	Nov. 25, 1864	794
Nov. 10, 1864	S. Crookes ..... do	1,289.23	Dec. 21, 1864	1378
Nov. 25, 1864	F. Skinner ..... do	2,146.41	Dec. 30, 1864	786
Dec. 3, 1864	W. Loeschigk et al ..... Schell..	2,249.76	Dec. 24, 1864	2455
	C. Gignoux et al ..... do	1,919.60	Jan. 4, 1865	2028
	Do ..... Barney..	730.02	...do	2250
	V. Fanche ..... Schell..	3,777.79	Dec. 24, 1864	2025
	C. Payen et al ..... do	2,342.71	Dec. 23, 1864	2033
	A. Lachaise et al ..... Bronson..	2,230.47	Dec. 22, 1864	290
	H. G. Ely et al ..... Redfield..	165.28	Dec. 20, 1864	793
Dec. 8, 1864	F. Schuchardt et al ..... Schell..	1,580.68	Jan. 10, 1865	528
	C. Dord et al ..... Redfield..	6,504.37	Dec. 30, 1864	356
Dec. 9, 1864	W. Loeschigk et al ..... Schell..	2,252.49	....do	2032
Dec. 20, 1864	A. Iselin et al ..... Barney..	750.80	Jan. 6, 1865	792
	W. Lattimer et al ..... Schell..	10,563.53	Jan. 4, 1865	511
Dec. 29, 1864	D. M. Mellis et al ..... Redfield..	4,766.52	Jan. 12, 1865	821
	C. F. Dambman ..... Schell..	2,479.94	Jan. 16, 1865	1262
	F. Hoose ..... Redfield..	930.15	Jan. 13, 1885	544
		157,391.23		
Jan. 10, 1865	W. Loeschigk et al ..... Barney..	1,842.96	Feb. 15, 1865	2256
	C. F. Dambman ..... do ..	1,081.82	Jan. 30, 1865	2249
	M. Maas ..... Schell..	314.21	do	57
	J. M. Beebe et al ..... Redfield..	415.33	Jan. 28, 1865	856
	Do ..... Schell..	435.74	..do	878
Jan. 20, 1865	H. J. Baker & Bro ..... Redfield..	567.66	Feb. 4, 1865	933
	J. J. Osborn ..... do	964.09	.. do	765
Jan. 21, 1865	Thomas Monroe et al ..... do	751.29	..do	790
	Loeschigk et al ..... Schell..	1,954.59	Feb. 13, 1865	2615
Jan. 31, 1865	William Weise ..... Redfield..	134.53	Feb. 11, 1865	864
	Do ..... Schell..	256.26	..do	879
	J. A. Fischer et al ..... Redfield..	3,623.37	Feb. 16, 1865	556
Feb. 15, 1865	E. Kaupe et al ..... do ..	3,849.48	Mar. 21, 1865	543
Feb. 25, 1865	H. A. Smythe et al ..... Schell..	1,716.00	Mar. 14, 1865	800
Mar. 7, 1865	C. Payen et al ..... Barney..	707.75	Mar. 21, 1865	2261
	E. Douglass et al ..... Redfield..	126.52	Mar. 23, 1865	895
	E. Armstrong et al ..... do ..	193.66	....do	802
	Do ..... Schell..	1,058.90	..do	902
	W. H. Scott et al ..... Redfield..	136.78	.. do	867
	Do ..... do..	421.62	... do	868
	H. P. Murray et al ..... do..	35.03	...do	865
	Do ..... Schell..	128.94	.. do	900
	I. Badnall et al ..... Redfield..	280.94	....do	804
	Do ..... Schell..	214.61	....do	897
Mar. 13, 1865	L. & B. Curtis et al ..... Barney..	1,654.51	Apr. 7, 1865	815
	W. Brunner ..... Schell..	3,557.72	Apr. 8, 1865	524
	V. Thurin et al ..... Redfield..	2,395.19	May 1, 1865	1375
	C. F. Van Blankknstyn et al ..... do ..	708.94	Apr. 7, 1865	314
	W. Lattimer et al ..... Barney..	2,240.73	Apr. 8, 1865	2257
Mar. 17, 1865	F. Remsly et al ..... Redfield..	1,165.73	Apr. 7, 1865	787
	R. A. Withaus et al ..... Schell..	4,117.11	Apr. 10, 1865	877
Mar. 22, 1865	J. C. Henderson ..... Redfield..	1,137.16	....do	796

327 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington	Parties.	Amount paid.	Date of Washington order for payment	Collectors and district attorney's docket number.
Mar. 24, 1865	John Hope et al ..... Redfield..	$229.51	Apr. 10, 1855	809
Mar. 31, 1865	John Hughes ..... do....	647.05	Apr. 18, 1865	805
Apr. 1, 1865	C. P. Cochrane et al ..... do....	13,846.11	Apr. 17, 1855	313
Apr. 11, 1865	T. N. Dall et al. ..... Schell..	1,618.43	May 1, 1865	1036
	H. M. Avery et al ..... Redfield..	435.21	....do	817
	S. D. Mills et al ..... do....	240.21	...do	871
	L. Sampson et al ..... do....	246.40	....do	819
	S. L. Bush et al ..... do....	489.60	... do	761
	L. D. Senat et al ..... do....	357.68	....do	857
	Do ..... do....	350.06	... do	858
Apr. 26, 1865	Do ..... Schell..	1,018.00	May 12, 1865	882
	J. M. Davis ..... do....	1,611.27	.. do	533
	H. Lewis et al ..... do..	2,381.47	May 16, 1865	749
May 2, 1865	R. A. Withaus et al ..... Redfield..	4,088.69	May 22, 1865	362
	J. B. Wellington et al ..... Schell..	1,329.77	May 18, 1865	545
May 3, 1865	T. W. Evans et al ..... Redfield..	330.70	May 20, 1865	862
	Do ..... Schell..	793.12	. do	905
	Union Adams ..... Redfield..	28.19	... do	824
	C. Cleveland et al ..... do....	2.48	.. do	820
	A. Henry ..... do....	8.53	...do	869
May 8, 1865	J. M. Davis ..... do....	1,005.44	....do	358
May 27, 1865	Thomas Drew et al ..... do....	998.46	June 14, 1865	870
	W. I. Hartman et al ..... do....	864.21	....do	818
	W. Graydon et al ..... Schell..	32.44	.. do	886
	J. Seligman et al ..... do....	11,856.95	June 20, 1865	753
June 5, 1865	R. A. Schnable et al ..... do....	261.08	June 26, 1865	826
June 6, 1855	C. R. Rechnagel et al ..... Redfield..	2,334.21	July 5, 1865	935
June 23, 1865	Thomas N. Dale et al ..... do....	3,179.71	July 12, 1865	347
July 21, 1865	W. M. Richards et al ..... do....	2,324.65	Aug. 3, 1865	931
	L. Curtis et al ..... Schell..	4,329.13	Aug. 22, 1865	2021
	C. E. Borsdorff et al ..... do....	1,439.33	Aug. 18, 1865	2020
July 31, 1865	E. Warburg ..... do....	1,232.85	....do	887
	R. Fischer & Co ..... do ..	2,041.39	...do	908
Aug. 4, 1865	F. H. Reiner et al ..... Redfield..	2,461.62	Sept. 18, 1865	352
	D. Lane et al. ..... Schell..	2,250.28	.. do	2031
	J. Cochrane et al ..... do ..	8,345.99	....do	2023
	A. Iselin et al ..... Redfield..	237.24	....do	1029
	F. Butterfield et al ..... do....	439.87	Sept. 22, 1865	1594
Aug. 5, 1865	F. Cottennett et al ..... do....	2,758.84	Sept. 23, 1865	1128
Aug. 22, 1865	A. Dennisson et al ..... Schell..	1,384.05	....do	916
	W. Moser ..... Redfield..	38.40	Sept. 22, 1865	1055
	L. O. Wilson et al ..... do....	276.39	....do	1762
	R. Schnabel et al ..... do....	29.35	....do	1577
Aug. 31, 1865	James Isler et al ..... do....	1,033.16	Sept. 27, 1865	540
	Do ..... Schell..	574.02	Sept. 25, 1865	549
	T. Cochrane et al ..... Barney..	516.63	do	2245
Sept. 6, 1865	J. A. Fischer et al ..... Schell..	1,361.43	Oct. 5, 1865	888
	J. Seligman et al ..... Barney..	1,258.85	....do	2263
Sept. 12, 1865	A. Moller et al ..... Schell..	295.73	Sept. 30, 1865	917
Sept. 15, 1865	B. Andrae et al ..... do....	904.44	Oct. 5, 1865	525
	C. W. Moore et al ..... Redfield..	1,932.17	Oct. 2, 1865	1016
Sept. 21, 1865	E. B. Strange et al ..... Barney..	3,068.97	Oct. 21, 1865	2262
	F. Rusch et al ..... Schell..	3,444.20	Oct. 27, 1865	890
Sept. 23, 1865	W. Crow et al ..... Redfield..	26.48	Oct. 23, 1865	1048
Sept. 28, 1865	W. C. Allen et al ..... do....	2,160.82	....do	1132
Oct. 3, 1865	J. Rouenthal et al ..... do....	2,345.03	Oct. 27, 1865	355
	D. Lane et al ..... Barney..	593.35	Oct. 21, 1865	2258
Oct. 9, 1865	H. J. Fairchild ..... Redfield..	730.33	Oct. 27, 1865	1539
Oct. 20, 1865	John Syz ..... Barney..	226.04	Nov. 23, 1865	2264
	J. Benkard et al ..... Redfield..	4,147.73	Nov. 6, 1865	811
Oct. 27, 1865	T. Passavant et al ..... Barney..	917.94	Nov. 8, 1865	2260
Nov. 11, 1865	S. Guillaume et al ..... Schell..	2,488.60	Nov. 28, 1865	2021
	J. Seligman et al ..... Redfield..	6,077.69	Dec. 4, 1865	1402
	A. Iselen et al ..... Schell..	2,332.35	Dec. 6, 1865	2030
Nov. 11, 1865	D. V. Freeman ..... Schell..	307.65	Nov. 28, 1865	1093
	E. A. Oelrichs et al ..... do ...	312.22	....do	530
	Same. ..... Redfield..	302.46	...do	327
	H. de Gow et al ..... Schell..	1,438.37	. do	2024
Nov. 18, 1865	George Christ et al ..... do....	3,834.33	Dec. 8, 1865	2022
	A. Arnold et al ..... Redfield..	762.46	Dec. 9, 1865	1506
Nov. 25, 1865	G. Hessenby et al ..... do....	2,081.77	Dec. 12, 1865	1168
	W. Bauendahl et al ..... do ..	3,625.39	.. do	1169
Nov. 28, 1865	H. Schundaff et al ..... do....	107.59	Dec. 9, 1865	1552
	F. Duyster et al ..... do....	49.07	Dec. 19, 1865	1148

326 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
July 8, 1864	F. Victor et al ..... Redfield..	$1,041.63	Aug. 4, 1864	927
	H. Strusberg et al ..... Schell..	2,422.73	Aug. 5, 1864	942
	W. Lattimer et al ..... Redfield..	8,687.25	Aug. 15, 1864	364
	Thomas Fielding et al ..... Schell..	491.36	Aug. 1, 1864	901
	E. Robins ..... Redfield..	389.79	Aug. 1, 1864	763
	J. B. Hall ..... do ..	223.61	Aug. 1, 1864	803
July 9, 1864	J. Lord ..... Schell..	1,075.59	Aug. 15, 1864	946
	J. Houldsworth et al ..... do	1,172.31	Aug. 12, 1864	750
	J. B. Hall et al ..... do	704.16	..do	899
July 29, 1864	C. F. Dambmann ..... Redfield..	6,911.15	Nov. 17, 1864	348
Aug. 28, 1864	W. M. Bliss ..... do ..	2,213.18	Sept. 14, 1864	808
	G. B. Reise et al ..... Schell..	906.66	....do	899
Sept. 3, 1864	R. Nicol ..... do	1,023.47	Sept. 22, 1864	752
	W. M. Gawtry ..... do ..	813.85	do	918
Oct. 6, 1864	C. G. Bour et al ..... Redfield..	5,025.51	Nov. 14, 1864	356
Oct. 8, 1864	F. Butterfield et al ..... Schell..	1,982.33	Oct. 28, 1864	718
	G. B. Reise et al ..... Redfield..	346.55	Oct. 21, 1864	904
	Platt & Bro ..... dó	214.07	Oct. 21, 1864	795
	Robert Nicol ..... do	396.65	Oct. 21, 1864	731
Oct. 11, 1864	H. Mouhn ..... Schell..	1,045.53	Oct. 28, 1864	1617
Oct. 24, 1864	C. Dord et al ..... do ..	5,762.05	Dec. 1, 1864	1236
Nov. 7, 1864	H. G. Ely et al ..... Redfield..	561.45	Nov. 25, 1864	794
Nov. 10, 1864	S. Crookes ..... do	1,289.23	Dec. 21, 1864	1378
Nov. 25, 1864	F. Skinner ..... do	2,146.47	Dec. 30, 1864	786
Dec. 3, 1864	W. Loeschigk et al ..... Schell..	2,249.76	Dec. 24, 1864	2455
	C. Gignoux et al ..... do ..	1,919.60	Jan. 4, 1865	2028
	Do ..... Barney..	730.02	..do	2250
	V. Fanche ..... Schell..	3,777.79	Dec. 24, 1864	2025
	C. Payen et al ..... do	2,342.71	Dec. 23, 1864	2033
	A. Lachaise et al ..... Bronson..	2,230.47	Dec. 22, 1864	290
	H. G. Ely et al ..... Redfield..	165.28	Dec. 20, 1864	793
Dec. 8, 1864	F. Schuchardt et al ..... Schell..	1,580.68	Jan. 10, 1865	528
	C. Dord et al ..... Redfield..	6,504.37	Dec. 30, 1864	356
Dec. 9, 1864	W. Loeschigk et al ..... Schell..	2,252.49	....do	2032
Dec. 20, 1864	A. Iselin et al ..... Barney..	750.80	Jan. 6, 1865	792
	W. Lattimer et al ..... Schell..	10,563.53	Jan. 4, 1865	511
Dec. 29, 1864	D. M. Mellis et al ..... Redfield..	4,766.52	Jan. 12, 1865	821
	C. F. Dambman ..... Schell..	2,479.94	Jan. 16, 1865	1262
	F. Hoose ..... Redfield..	930.15	Jan. 13, 1885	544
		157,391.23		
Jan. 10, 1865	W. Loeschigk et al ..... Barney..	1,842.96	Feb. 15, 1865	2256
	C. F. Dambman ..... do ..	1,081.82	Jan. 30, 1865	2249
	M. Maas ..... Schell..	314.21	do	57
	J. M. Beebe et al ..... Redfield..	415.33	Jan. 28, 1865	856
	Do ..... Schell..	435.74	..do	878
Jan. 20, 1865	H. J. Baker & Bro ..... Redfield..	567.66	Feb. 4, 1865	933
	J. J. Osborn ..... do	964.09	..do	765
Jan. 21, 1865	Thomas Monroe et al ..... do ..	751.29	do	790
	Loeschigk et al ..... Schell..	1,954.59	Feb. 13, 1865	2615
Jan. 31, 1865	William Weise ..... Redfield..	134.53	Feb. 11, 1865	864
	Do ..... Schell..	256.26	do	879
	J. A. Fischer et al ..... Redfield..	3,623.37	Feb. 16, 1865	556
Feb. 15, 1865	E. Kaupe et al ..... do ..	3,849.48	Mar. 21, 1865	549
Feb. 25, 1865	H. A. Smythe et al ..... Schell..	1,716.00	Mar. 14, 1865	800
Mar. 7, 1865	C. Payen et al ..... Barney..	707.75	Mar. 21, 1865	2261
	E. Douglass et al ..... Redfield..	126.52	Mar. 23, 1865	895
	E. Armstrong et al ..... do ..	193.66	....do	802
	Do ..... Schell..	1,058.90	..do	902
	W. H. Scott et al ..... Redfield..	136.78	.. do	867
	Do ..... do..	421.62	..do	868
	H. P. Murray et al ..... do..	35.03	...do	865
	Do ..... Schell..	128.94	..do	900
	I. Badnall et al ..... Redfield..	280.94	....do	804
	Do ..... Schell..	214.61	....do	897
Mar. 13, 1865	L. & B. Curtis et al ..... Barney..	1,654.51	Apr. 7, 1865	815
	W. Brunner ..... Schell..	3,557.72	Apr. 8, 1865	524
	V. Thurin et al ..... Redfield..	2,395.19	May 1, 1865	1375
	C. F. Van Blaukknstyn et al ..... do ..	708.94	Apr. 7, 1865	314
Mar. 17, 1865	W. Lattimer et al ..... Barney..	2,240.73	Apr. 8, 1865	2257
	F. Remsly et al ..... Redfield..	1,165.73	Apr. 7, 1865	787
	R. A. Withaus et al ..... Schell..	4,117.11	Apr. 10, 1865	877
Mar. 22, 1865	J. C. Henderson ..... Redfield..	1,137.16	....do	796

327 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington	Parties.	Amount paid.	Date of Washington order for payment	Collectors and district attorney's docket number.
Mar. 24, 1865	John Hope et al ..... Redfield..	$229.51	Apr. 10, 1855	809
Mar. 31, 1865	John Hughes..... do....	647.05	Apr. 18, 1865	805
Apr. 1, 1865	C. P. Cochrane et al..... do....	13,846.11	Apr. 17, 1855	313
Apr. 11, 1865	T. N. Dall et al. ..... Schell..	1,618.43	May 1, 1865	1036
	H. M. Avery et al..... Redfield..	435.21	....do	817
	S. D. Mills et al ..... do....	240.21	...do	871
	L. Sampson et al..... do....	246.40	....do	819
	S. L. Bush et al..... do....	489.60	... do	761
	L. D. Senat et al..... do....	357.68	....do	857
	Do ..... do....	350.06	... do	858
Apr. 26, 1865	Do ..... Schell..	1,018.00	May 12, 1865	882
	J. M. Davis ..... do....	1,611.27	.. do	533
	H. Lewis et al ..... do ..	2,381.47	May 16, 1865	749
May 2, 1865	R. A. Withaus et al..... Redfield..	4,088.69	May 22, 1865	362
	J. B. Wellington et al..... Schell..	1,329.77	May 18, 1865	545
May 3, 1865	T. W. Evans et al..... Redfield..	330.70	May 20, 1865	862
	Do ..... Schell..	793.12	. do	905
	Union Adams ..... Redfield..	28.19	... do	824
	C. Cleveland et al..... do....	2.48	.. do	820
	A. Henry ..... do....	8.53	... do	869
May 8, 1865	J. M. Davis..... do....	1,005.44	....do	358
May 27, 1865	Thomas Drew et al..... do....	998.46	June 14, 1865	870
	W. I. Hartman et al..... do....	864.21	....do	818
	W. Graydon et al ..... Schell..	32.44	. do	886
	J. Seligman et al ..... do....	11,856.95	June 20, 1865	753
June 5, 1865	R. A. Schnable et al..... do....	261.08	June 26, 1865	826
June 6, 1855	C. R. Rechnagel et al ..... Redfield..	2,334.21	July 5, 1865	935
June 23, 1865	Thomas N. Dale et al..... do....	3,179.71	July 12, 1865	347
July 21, 1865	W. M. Richards et al ..... do....	2,324.65	Aug. 3, 1865	931
	L. Curtis et al ..... Schell..	4,329.13	Aug. 22, 1865	2021
	C. E. Borsdorff et al..... do....	1,439.33	Aug. 18, 1865	2020
July 31, 1865	E. Warburg ..... do....	1,232.85	....do	887
	R. Fischer & Co ..... do ..	2,041.39	... do	908
Aug. 4, 1865	F. H. Reiner et al..... Redfield..	2,461.62	Sept. 18, 1865	352
	D. Lane et al. ..... Schell..	2,250.28	.. do	2031
	J. Cochrane et al ..... do ..	8,345.99	....do	2023
	A. Iselin et al ..... Redfield..	237.24	....do	1029
	F. Butterfield et al ..... do....	439.87	Sept. 22, 1865	1594
Aug. 5, 1865	F. Cottennett et al ..... do....	2,758.84	Sept. 23, 1865	1128
Aug. 22, 1865	A. Dennisson et al..... Schell..	1,384.05	....do	916
	W. Moser ..... Redfield..	38.40	Sept. 22, 1865	1055
	L. O. Wilson et al..... do....	276.39	....do	1762
	R. Schnabel et al..... do....	29.35	....do	1577
Aug. 31, 1865	James Isler et al ..... do....	1,033.16	Sept. 27, 1865	540
	Do ..... Schell..	574.02	Sept. 25, 1865	549
	T. Cochrane et al ..... Barney..	516.63	do	2245
Sept. 6, 1865	J. A. Fischer et al ..... Schell..	1,361.43	Oct. 5, 1865	888
	J. Seligman et al..... Barney..	1,258.85	....do	2263
Sept. 12, 1865	A. Moller et al..... Schell..	295.73	Sept. 30, 1865	917
Sept. 15, 1865	B. Andrae et al ..... do....	904.44	Oct. 5, 1865	525
	C. W. Moore et al..... Redfield..	1,932.17	Oct. 2, 1865	1016
Sept. 21, 1865	E. B. Strange et al..... Barney..	3,068.97	Oct. 21, 1865	2262
	F. Rusch et al ..... Schell..	3,444.20	Oct. 27, 1865	890
Sept. 23, 1865	W. Crow et al..... Redfield..	26.48	Oct. 23, 1865	1048
Sept. 28, 1865	W. C. Allen et al ..... do....	2,160.82	....do	1132
Oct. 3, 1865	J. Rouenthal et al ..... do....	2,345.03	Oct. 27, 1865	355
	D. Lane et al..... Barney..	593.35	Oct. 21, 1865	2258
Oct. 9, 1865	H. J. Fairchild ..... Redfield..	730.33	Oct. 27, 1865	1539
Oct. 20, 1865	John Syz..... Barney..	226.04	Nov. 23, 1865	2264
	J. Benkard et al..... Redfield..	4,147.73	Nov. 6, 1865	811
Oct. 27, 1865	T. Passavant et al ..... Barney..	917.94	Nov. 8, 1865	2260
Nov. 11, 1865	S. Guillaume et al..... Schell..	2,488.60	Nov. 28, 1865	2021
	J. Seligman et al ..... Redfield..	6,077.69	Dec. 4, 1865	1402
	A. Iselen et al..... Schell..	2,332.35	Dec. 6, 1865	2030
Nov. 11, 1865	D. V. Freeman..... Schell..	307.65	Nov. 28, 1865	1093
	E. A. Oelrichs et al ..... do ..	312.22	... do	530
	Same. ..... Redfield..	302.46	... do	327
	H. de Gow et al..... Schell..	1,438.37	. do	2024
Nov. 18, 1865	George Christ et al ..... do....	3,834.33	Dec. 8, 1865	2022
	A. Arnold et al ..... Redfield..	762.46	Dec. 9, 1865	1506
Nov. 25, 1865	G. Hessenby et al ..... do....	2,081.77	Dec. 12, 1865	1168
	W. Bauendahl et al..... do ..	3,625.39	... do	1169
Nov. 28, 1865	H. Schundaff et al ..... do....	107.59	Dec. 9, 1865	1552
	F. Duyster et al ..... do....	49.07	Dec. 19, 1865	1148

328 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
Dec. 8, 1865	L. Grossman et al.....Redfield..	$6,553.85	Dec. 22, 1865	1122
Dec. 28, 1865	P. A. H. Renauld et al .....Barney..	5,534.15	Mar. 1, 1866	2018
		179,702.80		
Jan. 23, 1866	L. Crossman et al.....Schell..	495.32	Feb. 7, 1866	1095
July. 2, 1866	L. Maillard et al.....Barney..	970.75	Sept. 11, 1866	2259
July 18, 1866	J. S. Grund et al .....Schell..	3,299.33	Aug. 27, 1866	2029
Aug. 25, 1866	E. Kaupe et al.....do....	1,089.00	Sept. 11, 1869	2367
Nov. 21, 1866	W. Watson et al.....Redfield..	2,362.42	Jan. 24, 1867	812
Nov. 2, 1866	I. Passavant et al .....Schell..	1,220.79	Dec. 15, 1866	2034
	H. Lewis et al .....Barney..	177.66	Dec. 7, 1866	2255
	L. Guillaume et al .....do....	689.18	Dec. 10, 1866	2251
	E. Blackburn et al .....Schell..	638.59	Dec. 7, 1866	512
	J. S. Grund et al .....Barney..	479.82	Dec. 10, 1866	2253
Dec. 6, 1866	F. Catean et al.....Schell..	1,920.96	Jan. 21, 1867	799
	J. W. Schulten et al .....do....	2,761.52	Jan. 23, 1867	2364
Dec. 7, 1866	E. B. Stange .....do....	278.35	Jan. 21, 1867	2265
Dec. 27, 1866	H. S. Caltin.....do....	2,769.65	Jan. 15, 1867	1361
		25,153.34		
Feb. 8, 1867	H. Benda et al.....Redfield..	432.75	Feb. 28, 1867	311
	A. S. Amson et al .....do....	490.17	... do	351
	Same .....Schell..	528.80	Apr. 28, 1867	1037
Apr. 3, 1867	E. Bierdt et al .....do....	1,512.08	Apr. 17, 1867	553
July 3, 1867	H. Benda et al.....do....	437.50	Sept. 21, 1867	2366
	V. Barsalow et al .....do....	1,200.64	.... do	1569
	H. Liger et al.....do....	946.22	.... do	527
	H. de Gow et al .....Barney..	182.82	.. do	2248
July 16, 1867	P. S. Hughes et al .....Redfield..	2,052.29	Apr. 21, 1868	542
	F. Schuchardt et al .....Schell..	1,263.20	.... do	2333
		9,046.47		
Apr. 21, 1868	B. Babcock et al .....Schell..	601.12	Apr. 21, 1867	2363
	John Syz et al .....do....	2,935.12	... do	2307
	P. S. Hughes et al.....do....	981.00	... do	548
		4,517.24		
July 20, 1869	F. M. Jones et al.....Redfield..	1,200.07	Aug. 28, 1869	546
Feb. 10, 1870	Le Boutillin et al.....Schell..	370.29	Mar. 8, 1870	1360
	F. Tomes et al .....do....	1,921.94	... do	1385
	Thomas Hill et al.....do	1,044.75	....do	1362
	W. N. Woodcock et al.....do....	4,417.61	....do	1382
	F. Tomes et al.....Redfield..	3,773.56	....do	1379
	Le Boutillin et al .....do ..	561.78	... do	1377
Feb. 12, 1870	Charles A. Morlot et al..... Schell..	871.54	Mar. 18, 1870	1006
Feb. 23, 1870	W. N. Woodcock et al .....Redfield..	9,111.54	... do	1376
Feb. 31, 1870	C. F. Hovey & Co., R. C. Greenleaf et al Schell..	730.37	Apr. 22, 1870	2027
Apr. 4, 1870	C. R. Raymard et al.....Redfield..	1,297.85	Apr. 28, 1870	1364
Apr. 12, 1870	F. W. Reiner et al .....Schell..	5,923.31	do	2019
Apr. 16, 1870	R. C. Greenleaf et al.....Barney..	984.70	....do	2252
	B. Babcock et al.....Bronson..	653.08	....do	292
Apr. 27, 1870	C. Auffmordt et al .....Schell..	3,290.40	May 9, 1870	891
May 28, 1870	George Christ et al.....Barney..	2,651.03	Oct. 15, 1870	2246
June 10, 1770	Jer. Fischer .....Redfield..	6,505.02	July 27, 1870	755
June 16, 1870	George A. Fanshame et al.....do....	7,636.07	Aug. 1, 1870	712
June 21, 1870	S. McLean et al.....do....	2,055.48	Aug. 2, 1870	1045
July 7, 1870	C. E. Basdorff et al.....Barney..	1,345.89	Aug. 4, 1870	2244
	S. D. Babcock et al .....Redfield..	3,432.38	Aug. 2, 1870	1139
July 9, 1870	W. Loeschigk et al .....Barney..	9,284.67	Sept. 14, 1870	2216
July 11, 1870	G. H. Kissell .....Redfield..	1,700.27	Aug. 1, 1870	1127
	H. F. Spaulding et al .....do....	2,708 05	....do	1011
July 20, 1870	M. Leinau et al.....do	721.60	Aug. 6, 1870	937
July 20, 1870	F. De Busy et al.....Redfield..	1,528.72	Aug. 6, 1870	1025
Aug. 8, 1870	J. Seligman et al .....Schell..	904.44	Aug. 27, 1870	889
Aug. 19, 1870	A. Plunkett et al .....Redfield..	187.32	Sept. 29, 1870	1043
	A. Noel et al.....do....	500.00	Sept. 16, 1870	1129
	L. Guillaume et al .....do....	593.83	Sept. 10, 1870	365
Aug. 21, 1870	L. H. Simpson et al .....do....	739.16	Oct. 21, 1870	1121
Aug. 23, 1870	C. E. Habecht et al.....do....	1,021.09	Aug. 31, 1870	309

329 Defendant's Exhibit No. 1.—March 30, 1885.—J. M. D.

EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
	S. Graydon, et al. ..... Redfield..	$5,857.52	Sept. 10, 1870	1162
	R. C. McButt et al. ..... do....	326.30	Oct. 7, 1870	1595
	G. J. Biechtel et al. ..... do....	176.16	... do	1155
Sept. 13, 1870	A. Parier et al. ..... do....	1,965.83	Oct. 13, 1870	767
Sept. 20, 1870	E. Beck et al ..... do....	229.72	Oct. 7, 1870	1152
	G. Wolfas et al ..... do....	777.75	....do	1160
	W. Clapp et al ..... Schell..	673.12	....do	747
Sept. 29, 1870	W. Loeschigh et al ..... do....	3,014.42	Oct. 15, 1870	*2615
	W. Carter et al ..... Redfield..	32.68	Oct. 7, 1870	1593
	W. Loeschigh et al ..... Schell..	3,389.35	Oct. 15, 1870	*2455
	A. Schnerwind et al ..... do....	1,180.96	... do	1591
Oct. 7, 1870	J. C. Kilgour et al ..... do....	952.50	Oct. 21, 1870	1005
Oct. 8, 1870	A. F. Heyr et al ..... Redfield..	880.36	Oct. 22, 1870	1598
Oct. 18, 1870	J. M. Strong et al ..... do....	4,068.82	Nov. 2, 1870	1014
	John Sykes, jr., et al ..... do....	1,460.04	... do	1227
Nov. 17, 1870	J. M. Beebe et al ..... do....	321.76	Dec. 2, 1870	860
Nov. 18, 1870	A. Arnold et al ..... Schell..	5,991.85	Dec. 17, 1870	1560
	S. Crooks et al ..... Maxwell..	66,270.96	Dec. 8, 1870	1123
Nov. 29, 1870	J. Cormah et al ..... Redfield..	4,685.47	... do	823
Dec. 6, 1870	F. Collenett et al ..... Schell..	6,234.56	Feb. 3, 1871	1863
Dec. 9, 1870	F. W. Jones et al ..... do....	898.55	Jan. 10, 1871	2934
	W. H. Lee et al ..... Redfield..	2,266.36	Jan. 16, 1871	940
Mar. 3, 1870	R. Makin et al ..... Schell..	2,123.41	Mar. 22, 1871	1384
		192,243.19		
Jan. 18, 1871	G. B. Reese et al ..... Redfield..	293.98	Mar. 1, 1871	866
Feb. 8, 1871	R. Slimmons et al ..... do....	4,037.99	....do	1167
Mar. 10, 1871	W. Bauendahl et al ..... Schell..	4,722.53	Mar. 30, 1871	1622
Mar. 22, 1871	F. Butterfield et al ..... do....	4,846.24	May 12, 1871	992
Apr. 5, 1871	W. C. Allen et al ..... do....	3,023.68	Apr. 28, 1871	1828
Apr. 26, 1871	A. Arnold et al ..... Barney..	2,531.53	May 8, 1871	2182
May 6, 1871	W. Watson et al ..... Schell..	6,889.81	May 24, 1871	1620
May 24, 1871	G. G. Sampson et al ..... do....	13,262.02	June 13, 1871	720
June 1, 1871	E. Kaupe et al ..... Barney..	1,090.81	June 23, 1871	2214
June 5, 1871	J. Lehmair et al ..... do....	1,815.79	....do	2215
June 16, 1871	F. Baley et al ..... Schell..	688.79	June 30, 1871	912
June 24, 1871	J. Linder et al ..... Barney..	1,156.88	July 21, 1871	2217
July 18, 1871	H. Hennequin et al ..... do....	985.00	July 28, 1871	2211
	G. H. Sampson et al ..... Redfield..	11,919.29	....do	709
Aug. 8, 1871	A. Gohon et al ..... Schell..	3,839.97	Aug. 22, 1871	1223
Aug. 19, 1871	C. E. Borsdorff et al ..... Barney..	309.00	Sept. 21, 1871	2187
	H. J. Fairchild et al ..... Schell..	11,690.29	Sept. 16, 1871	1538
Aug. 21, 1871	F. Rusch et al ..... do....	2,569.45	Aug. 28, 1871	993
Sept. 18, 1871	J. Benkard et al ..... Barney..	6,365.59	Oct. 2, 1871	1605
Sept. 20, 1871	C. H. P. Babcock et al ..... Schell..	8,659.40	....do	1558
Oct. 12, 1871	S. Garydon et al ..... do....	7,863.19	Oct. 30, 1871	1557
Oct. 14, 1871	S. McLean et al ..... do....	9,926.10	Nov. 1, 1871	1945
Nov. 11, 1871	V. Fauche a Lachane et al ..... do....	1,995.48	Nov. 28, 1871	1806
	G. A. Fanshaw et al ..... do....	7,879.88	Nov. 29, 1871	721
Nov. 14, 1871	W. Watson et al ..... Barney..	4,242.50	Dec. 9, 1871	2240
Nov. 18, 1871	R. Slimmons et al ..... Schell..	3,180.36	....do	2176
		125,783.55		
Jan. 20, 1872	J. Sykes, jr., et al ..... Schell..	4,758.98	Feb. 5, 1872	1984
	Do ..... Barney..	2,059.45	... do	2233
Feb. 16, 1872	J. Linder et al ..... Schell..	4,129.39	Feb. 27, 1872	1579
Mar. 12, 1872	F. Butterfield et al ..... do....	1,462.32	Apr. 1, 1872	1625
Mar. 25, 1872	Do ..... Barney..	7,445.24	Apr. 12, 1872	2192
Apr. 15, 1872	E. Keanys et al ..... Redfield..	405.75	May 10, 1872	713
	Do ..... Schell..	1,901.22	....do	722
	Do ..... do....	1,478.74	....do	723
	G. Kessell et al ..... do....	7,821.42	May 15, 1872	1732
May 12, 1872	F. Victor et al ..... Barney..	4,518.03	June 4, 1872	1743
June 7, 1872	W. Bauendahl et al ..... do....	4,276.38	June 26, 1872	2186
June 18, 1872	F. W. Reiner et al ..... do....	1,093.07	July 15, 1872	2226
	D. W. Mellis et al ..... Schell..	1,295.98	....do	1624
June 20, 1872	A. Plunkett et al ..... do....	315.92	....do	1107
	E. Warburg et al ..... Barney..	526.54	....do	2241
July 5, 1872	J. Rosenthal et al ..... Schell..	2,501.91	Aug. 19, 1872	2928
	C. Vyse et al ..... do....	2,804.62	Aug. 10, 1872	2915
	J. Stiener et al ..... do....	418.68	Aug. 19, 1872	2925

330 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorney's docket number.
	L. Heidenheimer et al ..... Schell..	$2,029.70	Aug. 10, 1872	2929
	Toledo, L. & B. R. R ..... do....	2,809.46	... do	2766
	S. Rosenfield et al ..... do....	4,015.25	....do	2932
	M. L. Hallowell et al ..... do...	1,704.30	....do	2919
July 9, 1872	H. J. Fairchild et al ..... Barney..	5,159.19	Aug. 27, 1872	2200
July 26, 1872	H. Stursberg et al ..... Schell..	5,228.00	....do	1988
	J. Fisher et al ..... Barney..	997.90	... do	2202
Aug. 19, 1872	F. Rusch et al ..... do....	2,425.39	Sept. 3, 1872	n. s. 403
Aug. 22, 1872	J. M. Jones, J. M. Davis et al ..... do....	3,207.67	Sept. 7, 1872	2788
Aug. 27, 1872	J. Fisher et al ..... Schell..	6,206.53	Sept. 23, 1872	1933
Sept. 11, 1872	C. A. Auffmordt ..... Barney..	5,680.29	Oct. 28, 1872	2181
Oct. 17, 1872	F. Vietor et al ..... do....	1,579.72	Nov. 7, 1872	2238
	J. H. Hardt et al ..... Schell..	4,840.54	Nov. 8, 1872	1533
Oct. 24, 1872	H. Stursberg et al ..... Barney..	2,904.18	Nov. 29, 1872	2227
	F. Faber et al ..... do....	264.26	....do	2195
Nov. 12, 1872	J. Fisher et al ..... do....	3,636.90	Dec. 11, 1872	2201
Nov. 23, 1872	L. Curtis et al ..... Schell..	3,769.33	Dec. 14, 1872	620
	H. E. Gillelan et al ..... do....	2,835.95	Dec. 19, 1872	2914
	C. E. Habecht et al ..... do ...	469.25	... do	2920
Dec. 2, 1872	C. E. Marlot et al ..... Barney..	365.12	do	n. s. 320
Dec. 21, 1872	Thomas Slocumb et al ..... Schell..	2,489.27	Jan. 31, 1873	1814
		111,831.84		
Jan. 4, 1873	Thomas Slocumb ..... Barney..	3,170.75	Feb. 14, 1873	2234
	J. A. Fisher ..... do ...	765.90	Feb. 10, 1873	2198
	J. Benkard, Hutter ..... Redfield..	13,950.13	.. do	850
	Do ..... Schell..	15,580.06	....do	801
	J. M. Jones et al ..... Barney..	1,135.72	Feb. 4, 1873	n. s. 338
	W. M. Woodcock et al ..... do ..	2,870.53	....do	311
Jan. 6, 1873	J. A. Fisher et al ..... do....	43.83	Feb. 10, 1873	2199
Jan. 12, 1873	A. Boyd, W. Boyd ..... Schell..	9,645.45	Mar. 5, 1873	1721
	Do ..... Redfield..	14,921.26	....do	1660
Jan. 13, 1873	W. Watt et al ..... do....	9,090.08	Feb. 25, 1873	1403
	Do ..... Schell..	5,605.12	Feb. 27, 1873	1400
Mar. 1, 1873	R. Fischer et al ..... Barney..	4,770.77	Mar. 28, 1873	2197
	Do ..... Schell..	4,332.31	Mar. 22, 1873	1931
	G. H. Stuart et al ..... do....	6,253.05	Mar. 18, 1873	1990
Mar. 4, 1873	M. Leenan et al ..... do....	665.28	Mar. 28, 1873	1943
Mar. 26, 1873	A. Rickard et al ..... do....	3,647.95	Apr. 7, 1873	618
Apr. 8, 1873	R. Irvin et al ..... Redfield..	13,792.71	Apr. 20, 1873	1613
	Do ..... Schell..	19,944.27	.. do	1628
Apr. 18, 1873	F. R. Fowler et al ..... Barney..	307.07	Apr. 29, 1873	2363
	J. S. Little et al ..... Schell..	2,880.09	....do	2926
Apr. 22, 1873	C. Dord et al ..... Barney..	2,871.83	May 9, 1873	n. s. 327
May 7, 1873	J. H. Hardt et al ..... do....	3,515.43	May 28, 1873	2808
	N. Ladewig et al ..... do....	2,082.06	... do	2221
June 12, 1873	A. Schnerwind et al ..... do....	619.99	May 13, 1873	n. s. 317
June 4, 1873	C. Pearson et al ..... Schell..	2,542.70	....do	2933
June 24, 1873	T. Cochrane et al ..... do	528.49	July 8, 1873	2023
	C. E. Dambman et al ..... do....	2,893.25	July 10, 1873	1262
	C. E. Borsdorff et al ..... do ...	2,973,52	... do .	2020
June 28, 1873	C. F. Van Blankensteger et al ..... Barney..	291.54	July 19, 1873	2620
	A. Iselin et al ..... do	2,544.98	....do	2621
	Do ..... Schell..	4,364.27	July 24, 1873	2030
	J. Lehmair et al ..... do....	4,728.98	July 10, 1873	2922
June 12, 1873	A. Wetter et al ..... do....	368.71	July 28, 1873	2454
June 18, 1873	J. W. Schulten et al ..... do....	2,846.69	Aug. 9, 1873	2364
Aug. 5, 1873	S. McLean et al ..... Barney..	5,029.06	Aug. 26, 1873	2220
	G. P. Naylor et al ..... Schell..	12,066.17	Sept. 2, 1873	1635
Aug. 18, 1873	J. Lehmair et al ..... Barney..	389.93	Aug. 30, 1873	n. s. 321
	S. Strahlheim et al ..... Schell..	2,875.49	Sept. 1, 1873	2918
	E. Kaupe et al ..... do	856.43	....do	2367
	W. S. King et al ..... Barney..	4,797.48	....do	1186
Sept. 12, 1873	C. F. Van Blankensteger et al ..... Schell..	1,362.62	Sept. 24, 1873	2544
Oct. 2, 1873	D. Lane et al ..... do....	1,453.50	Oct. 16, 1873	626
Oct. 8, 1873	C. G. Bonn et al ..... Redfield..	2,124.25	....do	346
Oct. 6, 1873	William Brunner et al ..... Barney..	11,298.92	Nov. 15, 1873	n. s. 390
	Do ..... do....	814.46	....do .	2721
Oct. 7, 1873	G. P. Naylor et al ..... Redfield..	28,299.76	Nov. 20, 1873	928
Oct. 18, 1873	E. B. Strange et al ..... Schell ..	781.10	Dec. 1, 1873	2265
Oct. 27, 1873	W. Brand et al ..... Barney..	4,940.84	Dec. 9, 1873	2189
Oct. 24, 1873	L. Grossman et al ..... Redfield..	2,701.95	Dec. 4, 1873	1122
Dec. 1, 1873	W. Brand et al ..... Schell..	1,630.42	Dec. 20, 1873	1722

331 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order of payment.	Collectors and district attorney's docket number.
Dec. 8, 1873	C. Dord et al ..... Redfield	$4, 127. 83	Dec. 18, 1873	356
	Do ..... Schell	2, 726. 66	....do	1236
Dec. 30, 1873	A. S. Stone et al ..... do	16, 721. 59	Jan. 9, 1874	2917
	V. Thirion et al ..... do	2, 029. 62	Jan. 13, 1874	1381
	Do ..... Redfield	2, 028. 69	Jan. 10, 1874	1375
		274, 999. 54		
Jan. 14, 1874	W. Lattimer et al ..... Schell	274. 96	Jan. 24, 1874	511
Jan. 21, 1874	J. Seligman et al ..... Redfield	1, 328. 90	Jan. 30, 1874	1402
Jan. 29, 1874	W. Lattimer et al ..... do	2, 627. 22	Feb. 10, 1874	364
Jan. 30, 1874	E. Kaupe et al ..... do	928. 76	Feb. 16, 1874	543
Feb. 4, 1874	J. A. Fisher et al ..... do	732. 37	.. do	556
Feb. 10, 1874	H. Flietman et al ..... Barney	998. 23	Mar. 6, 1874	2203
Feb. 12, 1874	C. W. Morse et al ..... Schell	8, 603. 21	.. do	1809
Feb. 10, 1874	F. W. Reiner et al ..... Redfield	3, 936. 85	Mar. 2, 1874	352
Feb. 18, 1874	W. Richards et al ..... Schell	4, 935. 15	Mar. 6, 1874	1982
Feb. 22, 1874	J. Rosenthal et al ..... Redfield	1, 571. 18	Mar. 11, 1874	355
Mar. 3, 1874	W. Outhout et al ..... do	4, 230. 34	Mar. 19, 1874	1614
	Do ..... Schell	2, 933. 40	... do	1645
Mar. 4, 1874	W. Sturgis, jr ..... do	3, 945. 89	... do	1566
	A. L. Reid et al ..... do	1, 614. 82	....do	1978
	L. O. Wilson et al ..... do	1, 085. 36	....do	1224
Mar. 20, 1874	C. L. Recknagel et al ..... do	1, 296. 16	Apr. 4, 1874	1981
Mar. 28, 1874	J. S. G und et al ..... do	284. 48	Apr. 8, 1874	2029
	T. N. Dale et al ..... Redfield	289. 11	....do	347
	S. Guilliaume et al ..... Schell	583. 54	....do	2026
Apr. 1, 1874	H. Lewis et al ..... do	717. 13	Apr. 11, 1874	749
Apr. 6, 1874	George Christ et al ..... do	2, 633. 60	Apr. 17, 1874	2622
	C. Payen et al ..... do	3, 053. 27	....do	2033
Apr. 18, 1874	C. Congreve et al ..... Redfield	4, 583. 53	May 11, 1874	1662
	Do ..... Schell	1, 453. 61	... do	1724
Apr. 18, 1874	L. P. Morton ..... do	402. 46	May 11, 1874	1807
	Do ..... do	2, 276. 70	....do	1808
Apr. 30, 1874	M. A. Sorchen et al ..... Barney	1, 729. 24	May 18, 1874	n. s. 315
May 7, 1874	T. Parsavant et al ..... Schell	2, 443. 35	do	2034
May 9, 1874	C. F. Van Blankensteyn et al ..... do	1, 696. 64	May 22, 1874	2927
	E. Lamarche et al ..... do	2, 830. 12	May 25, 1874	1941
July 14, 1874	R. McButt et al ..... do	1, 805. 62	July 31, 1874	1609
	W. M. Bliss et al ..... do	1, 749. 56	....do	2157
	S. W. Sears et al ..... do	1, 059. 40	....do	2297
	C. Abernathy et al ..... do	2, 376. 22	July 25, 1874	1561
	J. F. Noble et al ..... do	2, 993. 42	July 31, 1874	943
	F. Skinner et al ..... do	964. 71	July 25, 1874	1739
	E. Greff et al ..... do	918. 62	....do	1544
	J. Duncan et al ..... do	2, 776. 38	....do	2054
	G. H. Withaus et al ..... Barney	957. 15	Aug. 1, 1874	n. s. 312
	L. Curtis et al ..... do	3, 407. 87	....do	2247
July 16, 1874	F. A. Spies et al ..... Schell	928. 87	....do	2177
	H. Hennequin et al ..... do	3, 002. 47	July 31, 1874	2892
	G. F. Heye et al ..... do	3, 290. 23	.. do	1535
	R. P. Bruff et al ..... do	2, 306. 69	Aug. 6, 1874	2044
	G. H. Platt et al ..... do	348. 50	July 31, 1874	1976
	Thomas Drew et al ..... do	1, 915. 06	....do	1927
	H. Schorndorff et al ..... do	1, 510. 97	....do	1815
	H. I. Baker et al ..... do	833. 43	.. do	1642
July 27, 1874	R. Lamb et al ..... do	1, 101. 81	Aug. 12, 1874	2069
	J. C. Henderson et al ..... do	1, 231. 83	....do	1634
	H. M. Avery et al ..... do	782. 37	....do	1829
	R. D. Lothrop et al ..... do	1, 153. 83	....do	1032
	W. H. Scott et al ..... do	1, 137. 86	.. do	1989
Aug. 11, 1874	C. L. Sharpless et al ..... do	1, 346. 00	Aug. 21, 1874	1994
Aug. 15, 1874	L. Maillard et al ..... Barney	1, 639. 71	Sept. 3, 1874	n. s. 397
Aug. 21, 1874	N. McStea et al ..... Schell	39. 98	Sept. 15, 1874	1211
	I. Forstmann et al ..... Barney	1, 254. 09	Sept. 14, 1874	2204
	E. Robins et al ..... Schell	848. 32	....do	1979
Aug. 24, 1874	J. Naif et al ..... do	1, 270. 57	Sept. 25, 1874	1950
Aug. 21, 1874	H. B. Claflin et al ..... do	5, 371. 68	Oct. 8, 1874	1563
Oct. 8, 1874	H. F. Spaulding et al ..... do	6, 771. 29	Oct. 24, 1874	2985
	A. R. Wetmore et al ..... do	2, 268. 45	... do	1632
	Do ..... Redfield	2, 774. 15	....do	1649
	H. L. Pearson et al ..... do	3, 547. 19	... do	1609
	Do ..... Schell	2, 470. 72	....do	1640
	C. W. Schuffner et al ..... do	1, 636. 24	Oct. 28, 1874	1983

332 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorneys docket number.
	H. Ackerman et al. Schell.	$1,852.18	Oct. 24, 1874	1534
Oct. 24, 1874	F. M. Peyser et al do	1,017.37	Nov. 11, 1874	2931
Nov. 4, 1874	W. Brunner et al do	5,412.62	Nov. 18, 1874	524
Nov. 30, 1874	D. W. Catlin et al do	654.04	Dec. 17, 1874	2062
Dec. 12, 1874	E. Carow et al Barney	730.22	Dec. 28, 1874	2194
	C. Heerdt et al Schell	2,297.46	Mar. 6, 1876	997
	R. Nicol et al do	375.62	Mar. 22, 1875	1948
	J. Goodband et al do	332.59	do	2165
	A. Ladewig et al do	731.24	do	2136
	H. Stokes et al do	665.27	do	1737
	Do Redfield	1,344.21	do	1661
	J. Acker et al Schell	1,980.62	do	1798
	J. Seigman et al do	3,192.23	do	1532
Dec. 14, 1874	A. Noel et al do	7,498.09	Apr. 24, 1875	1949
	J. Fischer et al Redfield	6,374.75	May 6, 1875	1853
	T. Slocomb et al do	5,465.15	do	1759
	E. Lamarche do	4,504.73	Apr. 30, 1875	1137
		178,240.24		
Jan. 7, 1875	R. A. Withaus et al Redfield	943.66	May 6, 1875	1666
Jan. 27, 1875	F. A. Spies et al do	11,390.69	Apr. 30, 1875	308
	B. H. Hutton et al Bronson	5,183.22	May 6, 1875	331
Mar. 18, 1875	A. Lachaise et al Schell	193.55	May 22, 1875	265
	M. Mitchell et al do	2,621.26	May 6, 1875	619
	T. Passavant et al Barney	2,443.07	May 2, 1875	2769
	B. Babcock et al Redfield	4,952.96	Apr. 29, 1875	350
Apr. 19, 1875	H. B. Claflin et al do	7,378.46	June 21, 1875	1553
	J. Seligman et al do	2,340.52	June 19, 1875	1228
	A. Ladewig et al do	315.13	do	932
	G. Wolfers et al Barney	274.23	June 14, 1875	2239
	T. Eggleston et al. (Bullett, Robins & Co.), Redfield.	3,610.49	June 10, 1875	1652
	T. Eggleston Schell	2,370.86	do	1629
	T. Fielding et al do	223.60	May 22, 1875	1930
	P. Donald et al do	2,211.48	do	1726
		46,453.18		
Oct. 14, 1876	T. N. Dale et al Barney	1,450.64	Nov. 22, 1876	n. s. 329
Oct. 25, 1876	J. A. Ubsdell et al Redfield	2,446.84	Dec. 7, 1876	1555
Oct. 26, 1876	A. B. Thiriot et al do	3,707.41	Nov. 29, 1875	554
	B. Andrae et al do	4,593.36	Dec. 6, 1876	547
	H. J. Fairchild et al Barney	630.16	Dec. 4, 1876	3110
	C. Pearson, survivor of Ubsdell do	222.60	Dec. 6, 1876	400
Nov. 1, 1876	G. H. Ellery et al Schell	3,594.00	Dec. 9, 1876	1531
Nov. 13, 1876	P. Donald et al Redfield	1,485.35	Dec. 14, 1876	1166
	J. H. Hardt et al do	8,272.34	Dec. 9, 1876	1672
	H. Stursberg et al do	10,760.58	Jan. 15, 1877	1870
	S. Gutmann et al Barney	1,432.59	Dec. 19, 1876	2206
	F. Victor et al Redfield	8,341.74	Dec. 4, 1876	1667
Nov. 16, 1876	P. S. Hughes et al Barney	780.08	Dec. 15, 1876	325
	B. Andrae et al do	418.32	Dec. 28, 1876	310
	E. Brendt et al do	757.75	Dec. 15, 1876	331
	W. Chamberlain et al Schell	1,896.73	Dec. 16, 1876	616
Nov. 24, 1876	L. Heedenheimer et al Barney	1,860.65	Dec. 29, 1876	395
	J. Seigman et al do	804.70	Jan 4, 1877	1373
	T. Naef et al Redfield	3,832.61	Dec. 30, 1876	1226
Dec. 1, 1876	W. D. Cromwell et al do	20,211.95	Dec. 21, 1876	1020
	W. S. Wilson et al do	2,658.46	Dec. 30, 1876	1656
	W. H. Horstmann et al Schell	1,656.46	Jan. 15, 1877	1937
Dec. 13, 1876	Jas. Tucker et al Barney	1,017.72	Jan. 8, 1877	2355
	Henry Vyse et al do	2,718.81	Dec. 28, 1876	313
	L. Rosenfield et al do	2,957.56	Jan. 8, 1877	402
Dec. 18, 1876	E. S. Sherman et al Redfield	34,412.87	Dec. 29, 1876	1616
	T. B. Coddington et al Schell	34,098.57	Jan. 4, 1877	1647
Dec. 20, 1876	W. Lorschigh et al Redfield	23,598.93	Jan. 13, 1887	1575
	C. F. Dambman et al Barney	2,058.45	Jan. 12, 1877	3007
		182,689.22		
Jan. 6, 1877	E. Sully et al., survivors of W. Lattimer & Co., Barney.	326.58	Jan. 31, 1877	3012
	C. F. Van Blankensteyn et al. Barney	1,299.92	Jan. 29, 1877	n. s. 404
	L. Amson et al do	860.86	Jan. 31, 1877	n. s. 392

333 EXHIBIT C.—*Schedule of refunds in the charges and commissions cases, &c.*—Continued.

Date of forwarding statement to Washington.	Parties.	Amount paid.	Date of Washington order for payment.	Collectors and district attorneys docket number.
Jan. 17, 1877	W. Brand et al ..... Redfield..	$7,789.72	Feb. 12, 1877	1670
Jan. 25, 1877	A. Gihon ..... do....	14,901.14	Feb. 23, 1877	1592
	W. Sturgis, jr., et al ..... do....	10,072.19	Feb. 27, 1877	1554
	W. M. Bliss et al ..... do....	4,345.23	Feb. 20, 1877	1821
	S. M. Peyser et al ..... do....	206.44	Feb. 23, 1877	1615
Jan. 27, 1877	J. Stuart et al ..... do....	4,228.29	Feb. 20, 1877	757
	A. Agmer et al ..... do....	2,292.59	Feb. 23, 1877	875
	T. Drew et al ..... do....	1,195.10	Feb. 27, 1877	1851
	J. Acker et al ..... do....	8,857.23	Mar. 7, 1877	1747
	F. Debury et al ..... Schell..	504.52	... do	2475
	J. H. Dalles et al ..... do....	241.14	...do	2274
	J. Houldsworth et al ..... do....	671.89	Feb. 27, 1877	1935
	W. H. Lee (J. A. Bliss) ..... do ...	6,537.27	Mar. 12, 1877	2489
	H. A. Ackerman et al ..... Barney..	1,076.58	Mar. 7, 1877	2184
	E. Unkart et al ..... do....	1,196.42	....do ..	2237
	H. Heuschen et al ..... Schell..	2,237.10	Feb. 27, 1877	1729
Jan. 29, 1877	W. D. Cromwell et al ..... do....	1,125.49	do	1864
	A. Rickard et al ..... Barney..	1,999.15	Feb. 21, 1877	3014
Jan. 31, 1877	George Bliss (C. C. Landon) ..... Schell..	12,570.63	Mar. 13, 1877	2480
Feb. 5, 1877	R. Bell et al ..... Redfield..	1,608.26	Feb. 27, 1877	1165
	C. Augrave et al ..... do....	1,641.57	Mar. 16, 1877	1748
		87,785.31		

334 Defendants' Exhibit, No. 2.—March 30th, 1885.—J. M. D.

Errata, to be attached to General Regulations, No. 63.

Collectors and other officers of the customs will please correct the copies of General Regulations No. 63 sent them, as per errata, hereafter, viz:

Page 5, 16th line from top—"tariff duty and the" should be, "tariff duty but not the."

Page 5, 17th line from top—for "deducted therefrom," read "abated."

Page 6, 6th line from top—after "by gauge" insert "and weight."

Page 9, 19th line from top—"remedies" should be "remedy."

Page 15, 29th line from top—after "and transportation," insert "except in certain cases, see 'freight and transportation,' page 22."

Page 22, in the third paragraph on "Swiss goods," in the second line, strike out "place" and insert "country." On third line, same paragraph, after "seaport" add "of another country." In seventh line, same paragraph, strike out "place" and insert "country;" and at the conclusion of the paragraph add, "in pursuance of their original destination, as satisfactorily proved."

Page 22, last paragraph, on "freight or transportation," in the fifth line strike out "whether" and "the same or," so as to read, "to another port or place in another country." In the eighth line, same paragraph, instead of "shipped" insert "forwarded;" and in the ninth line instead of "transported" insert "exported."

Page 23, on third and fourth lines from top—strike out "or Glasgow, or Cardiff, or Londonderry," so as to read, "from China to Liverpool, &c."

Page 27, 27th line from top—for "entry" read "landing."

335 Page 28, in the second paragraph, third line—strike out "positively known to the appraisers;" and in first line, third paragraph, strike out "not to be allowed unless," so as to read "never more than the actual discount exhibited on the invoice;" and at the close of same paragraph, after "allowed," add "but in no case to be allowed where it will reduce the invoice value below the actual foreign market value of the merchandise at the date of exportation to the United States."

Page 29, last line on page—for "two cents and one-sixth of a cent," read "one cent and one-half of a cent."

Page 47, the paragraph on "gunny bags" to be stricken out.

Page 57, 6th line from top—for "is to be," read "are to be."

Page 66, 11th line from top—after "merchandise," insert "when brought."

Page 80, 12th line from top—for "1846" read "1843."

JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
April 16, 1856.

Defendant's exhibit No. 3.—For identification, April 1st, 1885. J. M. D.

N. Y. superior court.

PETER A. H. RENAULD, EMANUEL E. FRANCOIS and GEORGE F. W. BARTELS
against
HEMAN J. REDFIELD.

Summons for money demand on contract. (Com. not ser.)

To the above-named defendant:

336 You are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the superior court of New York City, at the City Hall in said city, and to serve a copy of your answer to the said complaint on the subscriber, at his office No. 60 Wall street, said city, within twenty days after the service of this summons on you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiffs in this action will take judgment against you for the sum of five thousand dollars, with interest from the 1st day of November, one thousand eight hundred and fifty-three, besides the costs of this action.

Dated New York, October 20, 1860.

W. H. DICKINSON,
Plaintiffs' Attorney, 60 Wall Street.

Defendant's Exhibit No. 4.—For identification, April 1st, 1885.—J. M. D.

N. Y. superior court.

HEMAN J. REDFIELD,
ads.
PETER A. H. RENAULD, EMANUEL E. FRANCOIS, and George F. W. Bartels.

Notice of appearance.

SIR: You will please take notice that I am retained by and appear as attorney for Augustus Schell, the defendant in this action, and demand

service of a bill of particulars of the plaintiff's claim herein, and a
337 copy of their complaint upon me at my office in the U. S. court buildings, Nos. 41 and 43 Chambers street, in the city of New York.

Yours, &c.,

JAMES I. ROOSEVELT,
Attorney for Defendant.

To W. H. DICKINSON, Esq.,
Plaintiff's Attorney.

Defendant's Exhibit No. 5.—For identification, April 1st, 1885.—J. M. D.

The President of the United States of America, to the justices of the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you, against Heman J. Redfield, defendant, by Peter A. H. Renauld, Emanuel Francois and George F. W. Bartels, plaintiff, do therefore command you, that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the fifteenth day of April, A. D. 1861, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon, what of right ought to be done.

Witness, Roger B. Taney, esquire, Chief Justice of the Supreme Court of the United States, the 12th day of April, in the year one thousand eight hundred and sixty-one.

[L. S.]

E. DELAFIELD SMITH,
Defendant's Attorney.
KENNETH G. WHITE, *Clerk.*

338 Defendant's Exhibit No. 6.—For identification, April 1st, 1885.—J. M. D.

U. S. circuit court.

PETER A. H. RENAULD, E. E. FRANCOIS, AND Geo. W. Bartels
vs.
H. J. REDFIELD.

SOUTHERN DISTRICT OF NEW YORK:

The above-named plaintiffs come here into court and by W. H. Dickinson, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 20th day of October, 1860, last past, an action was commenced in the superior court of N. Y. City, according to the laws of the State of New York, and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiff against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said court, on the day of .

That the defendant afterwards, by J. J. Roosevelt, attorney, duly appeared in said action, and such proceedings were thereupon had, that afterwards, and on the day of April, in the year of our Lord one thousand eight hundred and sixty-one, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided, and the clerk of the said court did thereupon return the said writ with the summons aforesaid, and did file the same in this court according to
339 the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiff, according to attorney aforesaid, complain of the defendant herein in a plea of trespass on the case.

For that whereas the said defendant, on the 20th day of October, one thousand eight hundred and sixty, at the city of New York, in the southern district of New York aforesaid, were indebted to the said plaintiff in the sum of five thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiff to the said defendant, and at the special instance and request of said defendant, and for other money by the said plaintiff before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant, and for other money by the said defendant, before that time had and received, to and for the use of the said plaintiff, and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the defendant should be thereunto afterwards requested. And whereas, also, the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted, together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there found to be in arrear and indebted to the said plaintiff in the further
340 sum of five thousand dollars, of lawful money as aforesaid, and being so found in arrear, and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same, or any part thereof, to the said plaintiff, the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiff of five thousand dollars, and thereof the plaintiff bring suit, &c.

W. H. DICKINSON,
Pl'ff's Attorney.

Defendant's Exhibit No. 7.—For identification, April 1st, 1885.—J. M. D.

United States circuit court, southern district of New York.

HEMAN J. REDFIELD
ads.
PETER A. H. RENAULD, E. E. FRANCOIS, and George W. Bartels. } Plea.

And the said defendant, Augustus Schell, by E. Delafield Smith, his attorney, comes and defends the wrong and injury, when, &c., and says, that he did not undertake and promise, in manner and form, as the
341 said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs doth the like, &c.

E. DELAFIELD SMITH,
Defendant's Atty.

To W. H. DICKINSON, Esq.,
Plaintiffs' Atty.

Defendant's Exhibit No. 8.—For identification, April 1st., 1885.—J. M. D.

United States circuit court, southern district of New York.

P. A. H. RENAULD ET AL.
vs.
HEMAN J. REDFIELD.

SIR: The particulars of the plaintiffs' claim in this action are as follows:

For excess of duty paid under protest upon merchandise imported by the plaintiffs in the following vessels, viz:

RENAULD, FRANCOIS & CO.

Name of vessel.	From what port.	Date of arrival.	Name of vessel.	From what port.	Date of arrival.
		1853.			1853.
Franklin	Havre	Jan. 3	342 Havre	Havre	June 4
Trumbull	"	Feb. 2	Murphis	"	" 6
Zurich	"	" "	Foulor	"	" 14
Splendid	"	" "	Carolus Magnus	"	" "
Lene	"	" 8	Advance	"	" "
Havre	"	" 19	Wm. Tell	"	" 22
Telassar	"	" "	Carrack	"	July 5
Iddo Kimball	"	" 21	Geo. Hurlburt	"	" 19
Lamoset	"	" 28	Tewpes	"	Aug. 15
Wm. Tell	"	March 3	Helvetia	"	" 17
Isaac Bell	"	" 7	Judah Touro	"	" 20
John Spencer	"	April 18	Heidelberg	"	" "
Mascongus	"	" 19	Sam. M. Fox	"	" 27
Helvetia	"	" 16	Liene	"	" "
Line	"	" 21	Trumbull	"	Sept. 3
Orlando	"	" 21	Germania	"	" 5
Corinthian	"	" 27	Zurich	"	" 12
Zurich	"	May 9	Hope Goodwin	"	" "
Cromwell	"	" 16	Elvira Owene	"	" "
Germania	"	" "	Flairfield	"	" "
Admiral	"	" 30	Mercury	Havre	Sept. 26
Liberty	"	June 1	Harvest Queen	"	Oct. 3
Vaucluse	"	" 5	Harvest Queen	"	" "

Name of vessel.	From what port.	Date of arrival.
		1853.
Screamer	Havre	Oct. 17
Havre	"	" 18'53
South America	"	" 20
Constitution	"	Nov. 11
W. H. Wharton	"	" "
Corinthian	"	" "
Empire	"	" 17
Vaucluse	"	" "
Maid of Orleans	"	" "
Isaac Bell	"	" "
		1853.
St. Denis	"	Nov. 22
Advance	"	" 22
Helvestia	"	" 28
John Wesley	"	Dec. 9
Connecticut	"	" "
Admiral	"	" 12
Art Union	"	" 27
Art Union	"	" 21
		1854.
Susan E. Howel	"	Jan. 14
Carolus Magnus	"	" "
Zurich	"	" "
R. C. Winthrop	"	" 18
Eric	"	Feb. 11
Trumbull	"	" 16
Barariae	"	" 23
Edwin Forest	"	" 24
Electric	"	March 23
Chesapeake	"	" 31
J. Bell	"	April 3
Wm. Nelson	"	" "
Chesire	"	" 12
Satellite	"	" "
John Wesley	"	" 15
S. G Hyde	"	" 21
Joseph Holmes	"	" "
Metropolitan	"	" 22
Milwaukee	"	" 26
Art Union	"	May 8
Challenge	"	" 11
343 Sarah Park	Havre	May 11
Heidelberg	"	" 6
Advance	"	" 19
Northern Belle	"	" 22
M. Livingstone	"	June 1
Cumberland	"	" 5
Zurich	"	" 12
Havre	"	" 12
Inventor	"	" 19
Sciote	"	July 28
Stormway	"	" 10
Hungarian	"	Aug. 12
Delaware	"	" 26
Vaucluse	"	Sept. 4
Sp'k of the Oc'n	"	" 19
Memphis	"	Oct. 5
Flora McDonald	"	" 16
W. H. Wharton	"	" "
Wm. Laytone	"	" 23
Milwaukie	"	" 24
Far West	"	" "
Edgar Stringer	"	" 26
Str. St. Louis	"	Nov. 12
Do	"	" "
Canvass Back	"	" 21
Hemisphere	"	Dec. 2
Bavaria	"	" "
Admiral	"	" 18
Irene	"	" 28
"	"	1855
Warehouse entries.		
Corinthian	Havre,'55	Jan. 6
Eagle	"	" 10
Abby Langdon	"	" "
Albertina	"	Feb. 7
St. Bernard	"	" 12
Leila	"	" "

Name of vessel.	From what port.	Date of arrival.
Warehouse entries—Cont'd.		1855.
John Benson	Havre	Feb. 17
Dudley	"	" 20
Emma Lincoln	"	" 25
Advance	"	March 24
A. Metcalf	"	" 27
Challenge	"	" 31
Express	"	April 10
F. A. Palmer	"	" 17
New York	"	" "
Mary Ogden	"	" 21
Confederation	"	" "
Northwind	"	" 25
Bavaria	"	" 24
Andrew Ring	"	May 8
Almira	"	" "
St. Nicholas	"	" "
Splendid	"	" "
Lyra	"	" 12
Metropolis	"	" 17
Victoria Reed	"	" 22
Mercury	"	" "
Edwd. Everitt	"	" 23
E. W. Seyburn	"	" "
Albertina	"	June 11
Switzerland	"	" 7
Wm. Skinner	"	" 19
Helvetia	"	" 20
Heidelberg	"	" 22
St. Paul	"	" 22
Henry Harbeck		" "
John Hancock		" 23
Vicksburg		" 27
Leo		July 2
J. M. Morales		" 17
Do		" "
Stephen Joy		" 27
Delphos		" 30
Joseph Fish		Aug. 22
St. Nicholas		Sept. 3
Splendid		" 14
M. Livingston		" 15
Admiral		" 20
Connecticut		" 24
Mercury		" "
Mary Ogden		" 27
Mary Lucretia		Oct. 1
Angela Brewer		Oct. 4
" "		" 4
Switzerland		" 17
Helvetia		" 17
344 Mountaineer		Oct. 22
Leo		" 25
J. M. Morales		" 29
Venice		Nov. 12
R. L. Lane		" 16
Albertina		" 23
L. D. Carver		Dec. 3
Mary Dunham		" 7
Lizzie Harward		" 21
Confederation		" 22
St. Nicholas		" 22
James M. Hicks		" 22
Zurich		" 24
Consumption, 1855.		
Graf. von Schwerin		Jan. 8
Corinthian		" 10
Alleghanean		" 18
Kate Heath		" 22
Chas. Crocker		Feb. 3
Havre		" 9
Olivia		" 13
Emma Lincoln		" 27
E. A. Kinsman		March 23
Escoriaza		" 24
Eliza Ann		" 24

Name of vessel.	From what port.	Date of arrival.
Consumption—Cont'd.		
		1855.
Adelaide Metcalf		March 28
Northmane		" 23
Swan		April 9
Gov. Hubbard		" 12
Challenge		" 16
New York		" 18
W. D. Shurtz		" 18
Leo		" 18
Martha Ann		May 14
Palestine		" 19
Geo. Byron		June 5
Heber		" 29
"		" 29
Delphos		Aug. 1
Pacific		" 10
Connecticut		Sept. 26
Mercury		" 26
Ottowa		" 26
Melazzo		Oct. 2
Mary Lucretia		" 4
Angela (Received)		" 6
Pereiro Segundo		" 11
Germania		" 15
"		" 15
Wm. Tell		" 25
Canton	Havre	" 27
Republic	"	Nov. 12
Havre	"	" 12
L. D. Carver		Dec. 4
C. B. Williams		" 5
Warehouse, 1856.		
Quaker City	1856	Jan. 2
Jan van Brakel		" 4
Kong Thrym		" 14
"		" 14
"		" 14
Admiral		Feb. 28
Canrobert		March 8
Albertina		" 8
F. A. Palmer		" 24
Havre		" 24
Switzerland		" 25
Germania		" 24
E. Z		April 1
Clara B. Williams		" 2
J. H. Ryerson		" 7
Auffredy		" 7
"		" 7
Free State		" 17
Fleurian de Bellevue		" 19
" "		" 19
Maria		" 30
Fairfield		May 3
Azzan		" 12
Gold Hunter		" "
Consul		" 17
Uncle Toby		" 23
Holandia		" "
Ravenswood, "lost & received C. Warren"		" 16
Zurich		" 31
345 Confederation		June 7
Hemisphere		" 9
G. F. Patten		" 11
Czarina		" "
Sea Lion		" 11
Flash		" 14
Harbinger		" 16
Lincoln, Webb		" 17
Joseph Grice		" 25
Dois de Julho		" 26
Vaucluse		" 30
Bonito		July 2
F. A. Perley		" "

Name of vessel.	From what port.	Date of arrival.
Warehouse—Cont'd.		
		1856.
Baltic		July 5
Young Republic		" 7
Cornelia		" 28
Falmouth		Aug. 4
Byron		" "
"		" "
Peri		" 20
Mary Lucretia		Sept. 1
"		" "
Helvetia		" 13
R. D. Sheppard		" "
Cumberland		" 11
William Fisk		" 17
Emma		" 24
Bavaria		" "
Chase		" 29
Darien		Oct. 7
Rattler		" 14
E. Hamilton		" 27
Almena		Nov. 13
Admiral		" "
Mercury		" 12
Vaucluse		" "
Havre		" 25
Wm. Tell		" 27
A. Bonninger		Dec. 5
Erid		" 12
Hellespont		" 16
Theo. Curtis		" "
Vision		" 31
Consumption, 1856.		
Naramissic		Feb. 5
Nennphar		" 26
Admiral		" 28
T. M. Mayhew		Mar. 5
Cumberland		" 7
Express		" 10
Scotland		" 26
John Benson		" "
Wisconsin		" "
Robert Mowe		" 28
Leo		" 31
Marengo		Apr. 7
Isabella Jewett		" "
M. I. Colcord		" 12
Flying Childers		" 22
Architect		" 24
Robert L. Lane		" "
Saratoga		May 23
Lyra		" 8
St. Nicholas		" "
Marmion		" 14
Goldhunter		" 13
Ticonderoga		" 24
Zenophon		" 28
Quaker City		June 16
Lincoln Webb		" 18
Middlesex		" 25
Dois De Julho		" 28
Cornelia		" 29
Jessamine		" 21
Toulon		Aug. 13
Stephen Jay		" "
Stephen Jay		" "
Laurel		" 20
Free State		Sept. 26
Chase		Oct. 2
Express		" 4
Exchange		" 13
St. Jean		" 16
O. O. Dow		Nov. 10
Volant		" 21
Sophia		" 28

Name of vessel.	From what port.	Date of arrival.	Name of vessel.	From what port.	Date of arrival.
346 *Warehouse*, 1857.			*Warehouse*—Cont'd.		1857.
Red Rover		Jan. 2	Rapid		Apr. 16
Gauntlett		" 13	Admiral		" 11
Helvetia		Feb. 4	Wm. Tell		" 17
G. W. Barter		" "	C. H. Frost		" 20
Stadland		" 7	Havre		" 23
W. Frothingham		" 13			
Notre Dame des Victoires		" 14	*Consumption*, 1857.		
Zurich		" 16			
Velocity		Mar. 20	Express		Jan. 16
Oregon		Apr. 3	Cienfuegos		Feb. 9
Revolution		" 7	Governor		" 24
Neptune		" 9	Hartstein		Apr. 8
Wild Wave		" 11	Cruz Terreiro		" 9
Tornado		" 15			

Defendant's Exhibit No. 9—For identification, April 1st, 1885.
J. M. D.

MONDAY, *January* 11*th*, 1864.

The court meets pursuant to adjournment, and is opened by proclamation.

P. A. H. RENAULD ET AL.
vs.
HEMAN J. REDFIELD.

On motion of Mr. A. W. Griswold, ordered trial.

JURORS SWORN: Robert S. Walker, Walter S. Jarvis, Joseph Howland, Moses Furst, John B. Stetzler, Jacob Lammant, George Whitely, Sigismund Rosenblatt, Leon Von Collum, Robert Grant, John Z. Westervelt, W. T. Boyd.

By consent of counsel the jury find a verdict for the plaintiffs in
347 the above cause for the amount, with interest, of the excess of duties paid under protest on more than two per cent. commissions on all importations, specified in the bill of particulars in this cause from the Continent of Europe except Paris, and on more than one or more than one and a half per cent. commission on importations from Great Britain; and a like verdict for the excess of duties paid under protest on the importations from the Continent of Europe specified in the bill of particulars in this cause upon charges above those set forth in the reports of Isaac Phillips, appraiser, dated October 13th, 1856, and of the several subsequent dates, the amount in this cause to be adjusted by the clerk of this court or his deputy.

Defendant's Exhibit No. 10.—For identification, April 1st, 1885.—
J. M. D.

Circuit court of the United States for the southern district of New York.

P. A. H. RENAULD ET AL.,
vs.
HEMAN J. REDFIELD.

In pursuance of an order made in the above-entitled cause on the eleventh day of January, in the year of our Lord one thousand eight hundred and sixty-four, by which, among other things, it was referred
348 to the undergsined to adjust the amount for which judgment shall be entered upon the verdict in this cause and to report thereon to this court with all convenient speed.

I, R. E. Stilwell, to whom the matter was referred, do report, that I have been attended by the counsel for the respective parties, and have taken and examined the testimony offered in support of the plaintiffs' claim, and do find that the plaintiffs are entitled to judgment on said verdict for ten thousand three hundred and fifty-eight $\frac{25}{100}$ dollars.

Dated the 17th day of February, A. D. 1864.

All which is respectfully submitted.

R. E. STILWELL,
Dep. Clerk.
WM. H. DICKINSON,
Attorney for Plaintiff.

A copy.

JOHN I. DAVENPORT,
Clerk.

349 Defendant's Exhibit No. 11.—For identification, April 1st, 1885.
J. M. D.

Copy of judgment roll offered in evidence by defendants, but excluded by referee.

U. S. circuit court.

PETER A. H. RENAULD, E. E. FRANCOIS, and Geo. F. W. Bartels
vs.
H. J. REDFIELD.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The above-named plaintiffs come here into court, and by A. W. Griswold, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the 20th day of October, 1860, last past, an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of the said plaintiffs, against the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons

therein was filed in the clerk's office of the said superior court. That the defendant afterwards, by his attorneys, duly appeared in such action, and such proceeding were thereupon had, that afterwards, and on the day of in the year of our Lord one thousand eight hundred and , the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such cases made and provided; and the clerk of the said superior court did thereupon return the said writ with the
350 summons aforesaid, and did file the same in this court, according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the plaintiffs accordingly, by their attorney aforesaid, complain of the defendant herein in a plea of trespass on the case:

For that whereas the said defendant, on the 20th day of October, one thousand eight hundred and sixty, in the city of New York, in the southern district aforesaid, was indebted to the said plaintiffs in the sum of five thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned when the defendant should be thereunto requested. And whereas also the said defendant afterwards, to wit, on the same day and year and at the same place aforesaid, accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum
351 of five thousand dollars of lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiffs, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, &c.) has not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto wholly refused, and still does refuse, to the damage of the said plaintiffs of five thousand dollars, and therefore the plaintiffs bring suit, &c.

A. W. GRISWOLD,
Attorney for Plaintiffs.

And the said defendant, by his attorney, comes and defends the wrong and injury, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs have above thereof declared against him, and of this he puts himself upon the country, &c. Therefore the issue above joined is ordered by the said court, to be tried at a circuit court appointed to be held at the city hall of the city of New York on the 3d Monday, October, in the year eighteen hundred and sixty-four. And now at this day, to wit, the eleventh day of January, 1864, being as yet of the said October term, 1863, before the said justices at the city hall of the said city of New York, came the said parties, by their attorney, aforesaid; and the said circuit judge before whom the said issue was tried has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place within
352 contained, before Wm. D. Shipman, esq., judge of the said circuit court, came as well the within-named plaintiffs as the said defendant, by their respective attorneys, within mentioned; and the jurors of the jury whereof mention is within made, being summoned, also came, who, to speak the truth in the matters within contained, being chosen, tried, and sworn upon their oaths, do say that the said defendant did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damages of the said plaintiffs by reason of the premises at the sum of $10,358.25 over and above their costs and charges by him about his suit in this behalf expended, and for those costs and charges the sum of three hundred and twenty-four $\frac{70}{100}$ dollars. Therefore it is considered that the said plaintiffs recover against Heman J. Redfield, defendant, their damages aforesaid, by the jurors aforesaid, in form aforesaid found, and also their costs and charges of increase by the court now here adjudged to the said plaintiffs with their assent, which said damages, costs, and charges in the whole amount to ten thousand six hundred and eighty-two $\frac{95}{100}$ dollars.

Judgment signed this 17th Feb'y, 1864.

R. E. STILWELL,
Dep. Clerk.

(Indorsed:) Vol. 3, page 208. U. S. circuit court. P. A. H. Renauld et al. v. Heman J. Redfield. Judgment roll. A. W. Griswold, plffs' att'y.

Filed Feb'y 17, 1864.

353 Defendant's Exhibit No. 12.—For identification April 1st, 1885.—J. M. D.

Copy of satisfaction of judgment offered in evidence by defendants, but excluded by referee.

U. S. circuit court.

P. A. H. RENAULD ET AL.
against
HEMAN J. REDFIELD. } Satisfaction of judgment.

CITY AND COUNTY OF NEW YORK, *ss:*

Satisfaction is acknowledged between P. A. H. Renauld et al., plaintiff, and H. J. Redfield, defendant, for the sum of ten thousand six hundred

and eighty-two $\frac{95}{100}$ dollars. Judgment entered in the judgment book of the said court, the 17th day of February, one thousand eight hundred and sixty-four.

WM. H. DICKINSON.

Acknowledged before me the 7th day of April, 1864, by Wm. H. Dickinson, one of the attorneys for the plaintiffs in the above action.

R. E. STILWELL,
Deputy Clerk.

(Endorsement:) U. S. circuit court. P. A. H. Renauld et al. v. H. J. Redfield. Satisfaction of judgment. Wm. H. Dickinson, plff's att'y. Filed April 7th, 1864.

(Endorsed:) U. S. circuit court, southern district of New York. George F. W. Bartels et al. vs. Constance C. Redfield et al., executors, &c. Pl'ff's' and def'ts' bill of exceptions.
(File-mark.) U. S. circuit court. Filed Sep. 30, 1887. Timothy Griffith, Clerk.

354 Supreme Court of the United States.

CONSTANCE C. REDFIELD AND FRANK B. REDfield, executors, &c., of Heman J. Redfield, deceased, plaintiffs in error,
vs.
GEORGE F. W. BARTELS, PETER A. H. RENauld, and Emanuel E. Francois, defendants in error.
} Assignment of errors. O. S. 1596.

Afterwards, to wit, on the third Monday of October, in the same term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error, by Stephen A. Walker, their attorney, and say that in the record and proceedings aforesaid there is manifest error, in this, to wit: That by the record aforesaid it appears that the judgment aforesaid in form aforesaid given was given for the said defendants in error against the said plaintiffs in error for the sum of \$51,302$\frac{48}{100}$, whereas by the law of the land judgment ought to have been given for the said plaintiffs in error against the said defendants in error, and if judgment should have been given in favor of the said defendants in error and against the said plaintiffs in error, then judgment ought to have been given for the said defendants in error and against the said plaintiffs in error for the principal sum of \$14,394.95, with costs found due to the said defendants in error from the said plaintiffs in error without interest; and if judgment should have been given for the said defendants in error and against the said
355 plaintiffs in error for the said principal sum, with costs with any interest, then judgment for the said principal sum with costs ought to have been given for the said defendant in error against the said plaintiffs in error, with interest on said principal sum from the time only such principal sum was ascertained and so found due.

And the said plaintiffs pray that the judgment aforesaid for the error

aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

STEPHEN A. WALKER,
Att'y for Pl'ffs in Error.

356 (Indorsed:) U. S. Supreme Court. Constance C. Redfield & ano., exers., &c., of Heman J. Redfield, deceased, plffs. in error, versus Geo. F. W. Bartels et al., defts. in error. Assignment in error. Copy. Stephen A. Walker, United States attorney, attorney for plffs. in error. Room 50, P. O. Building, New York. Due service of a copy of the within is hereby admitted. New York, Oct. 13, 1887. Marsh, Wilson & Wallis, attorneys for deft. in error, per A. W. Griswold, counsel. To Marsh, Wilson & Wallis, esq., attorney for defts. in error. Filed Oct. 13, 1887.

357 Supreme Court of the United States.

CONSTANCE C. REDFIELD AND FRANK B. Redfield, executors of Heman J. Redfield, deceased, plffs. in error, *vs.* GEORGE F. W. BARTELS, PETER A. H. Renauld and Emanuel E. Francois, defts. in error.	Joinder in error. O. S. 1596.

And afterwards, to wit, on the third Monday of October, in said term, the said defendants in error, by Marsh, Wilson & Wallis, their attorneys, come here into court and say that there is no error to the prejudice of said plaintiff in error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the
358 judgment aforesaid, in form aforesaid given, may be in no respect reduced.

MARSH, WILSON & WALLIS,
For ALMON W. GRISWOLD,
Attys. for Defts. in Error, 155 Broadway, New York.

(Endorsed:) United States Supreme Court. Constance C. Redfield et al,. exrs., &c., plffs. in error vs. George F. W. Bartels et al. O. S. 1596. Defts. in error, Marsh, Wilson & Wallis, for A. W. Griswold, attys. for defts. in error, 11 Pine st., New York. Service of a copy of the within admitted Oct. 13, 1887.

Stephen A. Walker, atty. for plffs. in error, filed Oct. 13, 1887.

359 Supreme Court of the United States.

GEORGE F. W. BARTELS, PETER A. H. RENAULD, and EMANUEL E. FRANCOIS, plaintiffs in error,
vs.
CONSTANCE C. REDFIELD AND FRANK B. REDFIELD, executors of HEMAN J. Redfield, deceased, defts. in error.
} Assignment of errors. O. S. 1596.

Afterwards, to wit, on the third Monday of October term, before the justices of the said court, at the Capitol in Washington, come the said plaintiffs in error, by Marsh, Wilson & Wallis, their attorneys, and say, that in the record and proceedings aforesaid there is manifest error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said plaintiffs in error against the said defendants for the sum of $51,302\frac{48}{100}$, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs against the said defendants for a much larger sum. And
360 the said plaintiffs pray that the judgment aforesaid for the error aforesaid and other errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they, the said plaintiffs, may be restored to all things which they have lost by occasion of said judgment, &c.

MARSH, WILSON & WALLIS,
For A. W. GRISWOLD,
Attys. for Plffs. in Error, 155 Broadway, New York.

(Endorsed:) O. S. 1596. United States Supreme Court. George F. W. Bartels et al., plffs. in error, O. S. 1596, vs. Constance C. Redfield et al., exrs., &c., defts. in error. Assignment of error. Marsh, Wilson & Wallis, for A. W. Griswold, attys. for plffs. in error, 155 Broadway, New York. A copy of the within paper has been this day received at this office, Oct. 10, 1887. Stephen A. Walker, U. S. attorney. Due
361 service of a copy of within assignment of errors is hereby admitted.

Dated , 1887. U. S. circuit court. Filed Oct. 10, 1887, Timothy Griffith, clerk.

362 Supreme Court of the United States.

GEORGE F. W. BARTELS, PETER A. H. Renauld, & EMANUEL E. FRANCOIS, plaintiffs in error,
vs.
CONSTANCE C. REDFIELD & FRANK B. Redfield, executors of HEMAN J. Redfield, deceased.
} Joinder in error.

And afterwards, to wit, on the third Monday of October term, the said defendants in error, by Stephen A. Walker, their attorney, come here into court and say that there is no error to the prejudice of the plaintiffs in error either in the record or proceedings of aforesaid, or in the giving of the judgment aforesaid.

And they pray that the said Supreme Court, before the justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

STEPHEN A. WALKER,
Attorney for Defendants in Error.

363 (Endorsed:) O. S. 1596. United States Supreme Court. George F. W. Bartels et al., plaintiffs in error, vs. Constance C. Redfield & ano, executors, &c., joinder in error. Stephen A. Walker, attorney for defendants in error. Due service of a copy of the within joinder in error is hereby admitted this 13 day of October, 1887. Marsh, Wilson & Wallis, attorneys for plaintiffs in error. Per A. W. Griswold. Filed Oct. 13, 1887.

364 Circuit Court of the United States of America for the southern district of New York, in the second circuit.

GEORGE F. W. BARTELS, EMANUEL E. Francois, and Peter A. H. Renauld
vs.
CONSTANCE C. REDFIELD AND FRANK B. Redfield, executors, &c. of Heman J. Redfield, deceased.
} Bond for damages and costs.

Know all men by these presents, That we, Charles Renauld of 11 A 3rd Place, Brooklyn, N. Y., and A. W. Griswold, jr., of New York City, are held and firmly bound unto the above-named Constance C. Redfield and Frank B. Redfield, executors of Heman J. Redfield, in the sum of two hundred and fifty dollars, to be paid to the said Constance C. Redfield and Frank B. Redfield, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventh day of October in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas, the above-named George F. W. Bartels, Peter A. H. Renauld, and Emanuel E. Francois have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such that if the above-named George F. W. Bartels, Emanuel E. Francois, and Peter A. H. Renauld shall prosecute said writ of error to effect and answer all damages and costs, if they shall fail to make their plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

CHAS. RENAULD, [L. S.]
A. W. GRISWOLD, jr. [L. S.]

Sealed and delivered, and taken and acknowledged, this seventh day of October, 1887, before me.

[L. S.]

W. B. AVERY,
Notary Public, N. Y.

365 UNITED STATES OF AMERICA,
Southern district of New York, ss:

The within-named Charles Renauld and A. W. Griswold, jr., appearing before me and being duly sworn, each deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

CHAS. RENAULD,
A. W. GRISWOLD, jr.

Sworn to this seventh day of October, A. D. 1887, before me.
[L. S.] W. B. AVERY,
Notary Public, N. Y.

(Indorsed:) U. S. circuit court, southern district of New York. Geo. F. W. Bartels et al. vs. Constance C. Redfield et al. exec. Bond for costs on. Bond appeared as to form and sufficiency of sureties Oct. 10, 1887, E. Henry Lacombe, circuit judge U. S. circuit court, filed Oct. 10, 1887, Timothy Griffith, clerk.

366 UNITED STATES OF AMERICA, *ss.*

George F. W. Bartels, E. E. Francois and P. A. H. Renauld, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and eighty-seven, pursuant to a writ of errror, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Constance C. Redfield & ano. executors, &c., are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated Oct. 6th, 1886.

E. HENRY LACOMBE,
Circuit Judge.

367 (Indorsed): O. S. 1596, U. S. Supreme Court, Constance C. Redfield & ano., executors, &c., plaintiffs in error, against George F. W. Bartels et al., defendants in error. Citation. Due service of a copy of the within citation is hereby admitted this 6th day of October, 1887. Marsh, Wilson & Wallis, attorney for defendants in error, per A. W. Griswold, counsel. U. S. circuit court, filed Oct. 6, 1887, Timothy Griffith, clerk.

368 UNITED STATES OF AMERICA, *ss.*

To Constance C. Redfield and Frank B. Redfield, executors, &c., of Heman J. Redfield, deceased, defendants in error, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October, eighteen hundred and eighty-seven, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein George F. W. Bar-

tels, Peter A. H. Renauld and Emanuel E. Francois are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated New York, October 10th, 1887.

E. HENRY LACOMBE,
Circuit Judge.

369 (Indorsed): O. S. 1596. U. S. Supreme Court, George F. W. Bartels et al., plaintiffs in error, against O. S. 1596, Constance C. Redfield et al. exr's, &c., defendants in error. Citation. A copy of the within paper has been this day received at this office, October 10, 1887, Stephen A. Walker, U. S. attorney. Due service of a copy of the within citation is hereby admitted. Dated 188 . Marsh, Wilson & Wallis, pr. A. W. Griswold, att'ys for p'l'ffs in error, 155 Broadway, New York. U. S. circuit court. Filed Oct. 10, 1887, Timothy Griffith, clerk.

(Indorsed on cover:) No. 269. Constance C. Redfield and Frank B. Redfield, executrix and executor of Heman J. Redfield, deceased, late collector of the port of New York, plaintiffs in error, vs. George F. W. Bartels, Peter A. H. Renauld and Emanuel E. François. No. 270. George F. W. Bartels, Peter, A. H. Renauld, and Emanuel E. François, plaintiffs in error, vs. Constance C. Redfield and Frank B. Redfield, executrix and executor of Heman J. Redfield, deceased, late collector of the port of New York. S., New York.

C. C. U. S.

Filed Oct. 21, 1887.

Office Supreme Court U. S.
FILED,
MAR 25 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

CONSTANCE C. REDFIELD AND FRANK B. Redfield, extx. and exor. of Heman J. Redfield, deceased, late collector, etc., plaintiffs in error,
vs.
GEORGE F. W. BARTELS AND OTHERS. } No. 269.

GEORGE F. W. BARTELS AND OTHERS, plaintiffs in error,
vs.
CONSTANCE C. REDFIELD AND FRANK B. Redfield, extx. and exor. of Heman J. Redfield, deceased, late collector, etc. } No. 270.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

WM. A. MAURY,
Assistant Attorney-General.

Supreme Court of the United States.

OCTOBER TERM, 1890.

CONSTANCE C. REDFIELD AND FRANK B. Redfield, extx. and exor. of Heman J. Redfield, deceased, late collector, etc., plaintiffs in error, *vs.* GEORGE F. W. BARTELS AND OTHERS.	No. 269.
GEORGE F. W. BARTELS AND OTHERS, plaintiffs in error, *vs.* CONSTANCE C. REDFIELD AND FRANK B. Redfield, extx. and exor. of Heman J. Redfield, deceased, late collector, etc.	No. 270.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE EXECUTRIX AND EXECUTOR OF HEMAN J. REDFIELD, DECEASED, LATE COLLECTOR, ETC.

There are cross writs of error, but, as we understand it, no error will be assigned under the writ of error sued out by George F. W. Bartels and others.

This narrows the controversy to the writ of error sued out by the personal representatives of the late collector, Redfield.

STATEMENT.

This case belongs to that vast mass of sluggish litigation which has for years been burdening the docket of the circuit court of the United States for the southern district of New York, and which goes under the general name of the "Charges and Commissions Cases."

The litigation referred to grew out of the act of March 3, 1851 (9 Stat., 629), entitled "An act to amend the acts regulating the appraisement of imported merchandise, and for other purposes."

For some years after this act went into effect it was the practice to include in the valuation on which duty was assessed the cost of transporting goods from an interior market to the place of exportation.

But this view did not meet with the approval of the courts, and it having been repeatedly decided that charges of the kind mentioned could not be added for the purpose of making dutiable value, the Secretary of the Treasury, Mr. Chase, on May 21, 1863, issued the following instructions:

> Collectors and others are informed that this Department concurs in the decisions of the courts, that charges for transportation of goods from the interior of the country by railroad or water carriage, incurred prior to the time of exportation, can not be added to the value of the goods for the purpose of establishing their dutiable value. (Rec., p. 101.)

In the same way, it was the practice to include in the costs and charges added to make dutiable value a commission of $2\frac{1}{2}$ per centum on merchandise imported from Continental Europe, except Paris. But it having been

decided that 2 per centum was the proper commission in the case of Bredt *v.* Schell, in the circuit court for the southern district of New York, the Secretary of the Treasury, by the same instructions of May 21, 1863 (Rec., p. 101), directed the collectors and others to follow the decision in said case.

As a natural consequence, a vast amount of litigation was commenced for the purpose of recovering back the large amounts that had been illegally exacted in the name of duties.

This suit was brought by George F. W. Bartels and others, his alleged partners, in the New York supreme court on November 12, 1863, to recover back duties at the rate of 40 per cent. under Schedule B, act July 30, 1846 (9 Stat., 42), that had been unlawfully assessed on charges for inland transportation on a large number of importations of champagne wine invoiced from Rheims, and exported from the port of Havre, and on an excessive half of 1 per centum by way of commissions on the said importations (Rec., p. 3), and was removed to the circuit court by *certiorari* on February 20, 1864 (Rec., p. 4).

The declaration is composed of the common counts in assumpsit (Rec.; pp. 5, 6). The damages were laid at $1,500 only, originally, but afterwards, by an order entered January 8, 1881 (Rec., p. 14), 18 *years after the suit was brought*, leave was given the plaintiffs to amend their declaration by substituting $20,000 for the sum above mentioned, which was done.

On April 21, 1864, a jury was sworn in this case and

three others and a verdict, by consent, entered for the plaintiffs in each case, as follows (Rec., pp. 7, 8):

> By consent of counsel the jury find a verdict for the plaintiffs in the above-entitled action for excess of duty with interest thereon illegally exacted from plaintiffs and paid under protest to defendant, and not barred by the statute of limitations, on commissions over 1½ per centum on merchandise imported by the plaintiffs at New York from Great Britain; on commissions over 2 per centum on merchandise imported by plaintiffs at New York from the continent of Europe (except Paris); on the discount of 2½ per centum disallowed on linens imported at New York from Ireland; on charges on merchandise imported at New York from Ireland; on charges on merchandise imported at New York for the transportation of the goods from the interior of the country by railroad or water carriage incurred prior to the time of exportation; on coastwise and transportation charges from Ireland and Scotland to England on merchandise imported at New York from Ireland and Scotland via England; and on additions to make market value of said merchandise at London and Liverpool; on transportation charges from the continent of Europe to Great Britain on merchandise imported at New York from the continent of Europe via Great Britain; on merchandise imported by the plaintiffs at New York, and invoiced in Bremen thalers by the Bremen thalers having been computed in assessing duties at a higher rate than 71 cents, the rate at which it should by law have been computed; the amount of excess of duties exacted from the plaintiffs, and paid by the defendant, and embraced in the plaintiff's bill of particulars to be adjusted by the clerk of the court or his deputy. It is expressly stipulated that in case it shall appear on the adjustment or otherwise in any case that the suit was not brought within the time prescribed by statute of limitations or that the question of timeliness of protest, or the question of a sufficiency of a continuous or prospective protest shall be involved, the verdict shall be opened and opportunity to appeal be given to and at the option of the district attorney.
>
> A certificate of probable cause to be entered in each case.
>
> The right to appeal or writ of error as above not to be reserved to the district attorney, unless the amount involved be sufficiently large to allow such writ of error.

It is to be remarked, in connection with the terms of this consent verdict, that on November 20, 1874, an order, entered on the plaintiff's motion, directed that in adjusting said causes the referee should reject no item of claim in any case because paid more than six years before the commencement of suit, *unless it should appear that limitations had been duly pleaded in such case* (Rec., p. 9).

Afterwards, by an order entered March 16, 1865 (Rec. p. 8), all orders theretofore made referring certain suits against the collector of the port of New York "to the clerk of this court for adjustment" were revoked, except as to cases in which the clerk had begun to act.

And on July 1, 1865, this suit and others, affected by the said order, were referred to the collector of the port for adjustment (Rec., pp 8, 9).

From this date onward the case slumbered until June 30, 1882, *a period of* 17 *years*, when it was referred to Joseph M. Deuel, the clerk of the court, as referee, for the adjustment of the plaintiffs' claim. (Rec., p. 17.)

It is to be noted that the referee filed his report by December 14, 1882. The case was recommitted to him by an order dated May 16, 1884 (Rec , pp. 20, 21), sustaining some of the defendants' exceptions, and an additional report was filed on June 1, 1885 (Rec., pp. 21, 22), finding that the amount due plaintiffs was $14,394.95, principal money, and $29,988.55 interest to the date of the report. This report was in all things confirmed by an order dated April 19, 1886 (Rec., p. 23), which also directed that from that date interest should be computed on the compounded sum of $44,383.50.

It will be noticed that the order recommitting the report directs the referee to inquire into the subject of laches "which may affect the right of plaintiffs to recover interest under the decision of the Supreme Court in the case of Redfield *v.* Ystalyfera Iron Co."

For some reason, which it is difficult to account for, judgment was not entered in the case until October 3,

1887, when judgment was signed for $51,302.48. (Rec., p. 23.)

An elaborate bill of exceptions was filed covering all the matters excepted to on both sides. (Rec., pp. 24–97.)

ASSIGNMENTS OF ERROR.

It is conceived that there is error in the judgment, in this:

1. That, in allowing interest on the plaintiffs' claim, the court below seems to have disregarded the principle laid down by this court in the case of Redfield *v.* Ystalyfera Iron Co. (110 U. S. R., 174), the evidence before the referee showing laches on the part of the plaintiffs which seems inexcusable;

2. That, under the terms of the consent verdict, it was competent to the referee, and his duty, to reject all items which had been paid the collector more than six years before suit brought, irrespective of whether the statute of limitations had been formally pleaded or not;

3. That the court refused to consider the evidence tending to show that a part of the cause of action accrued before the plaintiff Bartels became a partner of the other plaintiffs, because the defendants had not pleaded the alleged misjoinder in abatement.

ARGUMENT.

The mode of proceeding by entering a consent verdict subject to a liquidation by a referee was absolutely necessary in this case unless the parties gave up all right of appealing to this court; for, at that time, the law did not recognize the right of the court, *as a court*, to try the law and the facts of a case under stipulation of the parties. The only recognized mode of trying issues of fact was by jury.

Since then the jury must appear by the record to have passed on the facts, it must do so by a general verdict subject to a special case afterwards to be made up by means of a referee. Otherwise the court, although invested with jurisdiction, could not have dealt with this case any more than a common law court could have administered the law by means of the old action of account without the intervention of auditors.

It is but to look at the bill of particulars in this case (Rec., pp. 15, 16) and to consider the number of difficult computations it necessarily calls for to be satisfied that the computation to be done could not have been done in the course of a jury trial, and that it was work to be performed, not by a jury or a court, but by a custom-house expert.

The court will observe that the jury actually rendered a verdict for the illegal excess of duties, with interest, subject only to a computation afterwards to be made, as is the practice in customs cases.

Moreover, the form of verdict entered in this case seems precisely the same as was entered in the case of Greenleaf *v.* Schell (6 Blatch., 225) before Blatchford, J.; and the same as was entered in Lattimer *v.* Redfield (cited in the above case) before Mr. Justice Nelson in 1863.

THE DEMAND FOR INTEREST.

This suit was brought, by service of process on Collector Redfield, on November 16, 1863 (Rec., pp. 3, 4), but judgment was not entered until October 3, 1887. (Rec., p. 23.)

Here is a delay of TWENTY-FOUR YEARS to be accounted for; and for the whole period of it interest, by way of damages, is asked.

Before the suit was brought the courts, as we have seen, had decided the questions involved, and the Secretary of the Treasury had acquiesced in the decision, and instructed the collectors accordingly.

There seems to have been great inattention to the prosecution of this case.

Even the motion for leave to increase the claim for damages in the declaration from $1,500 to $20,000 was, we have seen, not made *until about eighteen years* after the suit was brought, although it would seem that slight attention to the case would have suggested the necessity of the amendment, in view of the extent of the plaintiffs' claim. Indeed, the bill of particulars was not filed until May 11, 1882, some *nineteen years after the suit was brought.* And notwithstanding *every question in the case was settled* by the order of the court of April 19, 1886 (Rec., p. 23), the *judg-*

ment was not entered until October 3, 1887 (Rec., p. 23), *an, apparently, unnecessary delay of eighteen months, for which period of inexcusable delay the United States must pay interest if the judgment is allowed to stand.*

A great deal of evidence, all of which is set out in the bill of exceptions, with the referee's findings thereon, was introduced by the plaintiffs for the purpose of accounting for the delay in prosecuting the suit to judgment, but in the face of it all the court (Wallace, J.) declared that "*The delay which has intervened since the consent verdict in the case was entered, a period of over twenty years, is extraordinary*" (Rec., p. 96). Still, the learned judge thought he found enough in the evidence to warrant him in excusing the delay of the plaintiffs. He said:

> But the referee finds that the delay was not fairly attributable to the plaintiff, but arose mainly from complications incident to the fact that the suit was one of a very large number of similar suits in which questions affecting the defendants' liability were being litigated from time to time with varying results; that any recovery which plaintiffs might have obtained would not have been acquiesced in by the Government, but would have been further litigated; and that his claim was to that extent involved with the trials and results of the other suits that it was reasonable to postpone the trial in prospect of an adjustment which at times seemed to be near at hand, but was constantly deferred by the vacillating action of the officers of the Government. The conclusion of the referee seems to be sustained by the evidence (Rec., p. 96).

How this furnishes an answer to the charge of laches it is not easy to see. It has no relevancy to the subject for the reason that if the plaintiffs had pressed on to a final judgment their judgment would have been paid long ago out of the permanent appropriation for that purpose, the vacillating policy of the Government to the contrary notwithstanding; and a refusal to pay the judgment so recovered could have been compelled by mandamus.

The learned judge also says that the Government is partly to blame for the delay because it might have compelled the plaintiffs to prosecute their suit with diligence, but the learned judge does not tell us how he reconciles that view of the matter with the long-settled principle that the Government is not to be prejudiced by the laches of its owno fficers even though it be to the prejudice of a surety, who is said "to possess an interest in the letter of his contract." But we do not admit that such an application of the doctrine of *contributory negligence* would be admissible even against a private individual.

Instead of general evidence as to delays in the custom-house and as to changes of administrations and of officers, *it would be more instructive and more to the purpose if we had evidence* tending to show the use of reasonable diligence *in this suit.*

In October, 1860, these plaintiffs sued the collector, the defendant's testator, for excessive exactions of duty on charges and commissions and recovered judgment for $10,358.25 in February, 1864 (Rec., pp. 167-169), which is in striking contrast with the delays of this suit.

The referee found that the collector could have adjusted the plaintiffs' claims nineteen years ago if he had chosen to do it (Rec., p. 85). Why, then, did the plaintiffs submit to the collector's inaction and put off taking the reference out of his hands, as they finally did on June 30, 1882, when the case was referred to Mr. Deuel (Rec., p. 17), from the date of which reference it began to show vitality? If the plaintiffs had prosecuted their suit with diligence they could have gone through all the courts long ago.

These suits are seldom meritorious, because, as a general thing, the importer has, before suit brought, gotten back the amount illegally exacted as a part of the price paid by the consumers and purchasers of the goods, whose importation has given rise to the illegal exaction of duty, and he is consequently very little interested in going to law to get a *double refund.* But he is often tempted to do so by the speculator in claims of that sort, who is willing to carry on the suit at his own expense for a large share of the recovery, which the importer can well afford to pay, he having been already made whole, and what he gets in this way by suit being often so much clear gain.

In strong contrast with the position taken by the court below is the position of this court in *Redfield* v. *Ystalyfera Company* (110 U. S. R., 174), which is strikingly like this case. The court say:

> *The delay in the prosecution of the suit must be attributed to the plaintiff below.* It was the actor, and had come into court for the purpose of asserting and enforcing a right which the defendant below contested and denied and which it was necessary to determine and ascertain. The verdict was purely formal and was entered by consent after the hearing of the evidence, merely as a basis for further proceedings, which were to consist in an adjudication by the court of the questions of fact and law arising upon the testimony, and liquidation of the amount to be recovered in case the legal liability was found to exist.

If the court below chose to tolerate the delay that occurred in this case we do not complain, but we do complain that the United States should have been adjudged to pay interest for the long period of that delay. *It is enough that the plaintiffs' suit sheltered them from the plea of limitations, and from a plea of res judicata founded on the prior suit of* 1860 (Rec., p. 33), without the addition of a large amount of interest.

THE STATUTE OF LIMITATIONS.

In support of this assignment of error we appeal to the language of the consent order in virtue of which the verdict was entered (Rec., p. 7). We respectfully submit that that order imports a waiver of the plea of limitations. The defendants had already pleaded the general issue, and why did they not plead limitations if it was not that they considered the plea as waived? It is hardly possible that this plea would have been omitted if it had been deemed necessary under the order. The practical construction given by the parties to a writing often furnishes conclusive evidence of its meaning (Chicago *v.* Sheldon, 9 Wall., 54). It is, therefore, submitted that the order of November 20, 1874 (Rec., p. 9), restricting the defense of limitations to cases where the statute had been duly pleaded is erroneous under the order for a consent verdict.

MISJOINDER OF BARTELS.

It was error in the court below to refuse to consider the evidence of the misjoinder of Bartels, to the effect that Bartels was not a member of the importing firm when some of the importations took place, because the same was not pleaded. Misjoinder, like nonjoinder, may, in the case of a *plaintiff*, be taken advantage of on the general issue in assumpsit. This subject, more particularly as to nonjoinder, is discussed by Sergeant Williams in his notes to Cabell *v.* Vaughan (1 *Wms. Saund.*, 291 b.)

The principle would seem to be the same as to misjoinder, and it is believed that the law is correctly stated by Mr. Bouvier in the third volume of his Institutes, where he says that if misjoinder does not appear on the record it "may be a ground of non suit on the trial, for the plaintiffs do not prove a right to what they claim, as some of them have no right at all" (p. 173). This book is cited to the same point in Rhoads *v.* Booth, 14 Iowa, 577.

In Stephens's Nisi Prius (Vol. 1, p. 365, 1844, Philad., by Sharswood), the law is stated as follows:

> But a defendant may prove under the general issue that too many persons have been joined as plaintiffs in the action, for a contract with A. or with A. and B. is not a contract with A., B., and C.; and where parties have been improperly made co-defendants that fact may be shown at the trial under the plea, and the plaintiff will fail as to all the defendants, although one of them has admitted the joint contract on the record, for a joint contract must be established against all or none.

It is submitted that there is sufficient ground for reversing the judgment.

WM. A. MAURY,
Assistant Attorney-General.

MAR 30 1891
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

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BRIEF FOR BARTELS, &c.

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BRIEF FOR BARTELS, &c.

The plaintiffs in error in No. 270 consent to its dismissal.

In reply to the brief upon behalf of the plaintiffs in error in No. 269, the following argument is submitted :

The suit was brought in New York in 1863 to recover certain duties which had been exacted during the years 1853 to 1857, inclusive, upon importations of champagne wine from Rheims via Havre, the disputed items being duties (1) upon charges (freight, &c.) betwixt *Rheims*, where the wine was purchased, and *Havre*, the port of exportation ; and (2)

upon *commissions* over *two* per centum paid during the same transaction.

The declaration was upon the *common counts*, and the only plea was the *general issue* (folios 10, 14).

Upon the 21st of April, 1864, by consent, a formal verdict was entered for the plaintiffs, "the particulars to be adjusted by the clerk," &c. (15).

Upon March 16, 1865, the reference to the clerk was revoked, and on the 1st of July afterwards the case was referred to the then collector of the port (18, 19).

[On folio 17 the names of two other cases are mentioned along with the present case, as corresponding with the one in which the verdict and stipulation were formally entered—as to *counsel*, *jury*, and *verdict*; but on folio 148 it may be seen that on the same day, April 21, 1864, *67* other such verdicts were taken by *various* counsel, these being part of 244 like verdicts taken betwixt January 6 and May 27, 1864: the number afterwards referred to the *collector*, as above, being 180, and the whole number of "charges and commissions" cases then upon the docket being about 1,036.]

The verdict upon April 21, 1864, was "*for excess of duty, with interest thereon, illegally exacted from plaintiffs and paid under protest to defendants, and not barred by the statute of limitations, on commissions*," &c., &c.

In some of the cases above alluded to the *statute of limitations* had been pleaded, but in others (ex gr. the present case) it had not been. Although in such cases it seems that without explanation the referee would have applied the verdict to the state of the pleadings, and, *reddendo singula singulis*, have decided to enforce the statute only where it had been pleaded; yet he appears to have proceeded by the letter of the verdict,

or to have announced such a purpose; for, upon application to the court, it was ordered, November 20, 1874 (21), that he should confine the effect of that statute to those cases in which it had been *pleaded*.

In 1869, 1878, and 1880 various substitutions of attorneys for the plaintiffs were made in place of those originally employed (20, 23, 24, 26, 32); and during the pendency of the case numerous changes occurred in the office of the United States district attorney at that city.

In June, 1882, Mr. Griswold (whose name then first appears in the case), on behalf of the plaintiffs, obtained an order referring the case to the clerk of the court (45). In December thereafter a report was made (52) in favor of the plaintiffs, fixing their damages at $30,624.81, as of April 21, 1864. Upon May 16, 1884, after argument, certain exceptions by the defendant were sustained (57) and the case was sent back to the clerk for readjustment, with an additional direction to enquire into the question of *laches* by the plaintiffs, as suggested by the Ystalafera case (110 U. S., 174). Upon the 1st of June, 1885, the referee reported (59) that the plaintiffs were entitled to recover $44,383.50 as of the date of that report, and that there were upon the evidence before him no good grounds for attributing laches to the plaintiffs. More than one-half of the record is occupied by the evidence, &c., as to laches.

After exceptions by both parties, and argument, this report was confirmed (63).

The parties united in a bill of exceptions, which was filed during the same term; but, with their consent, this was held by the court until September 30, 1887 (236).

Judgment was rendered, in accordance with the report, upon October 3d, 1887.

The only *errors* now assigned by the learned counsel for the Government are as regards (1) the matter of *laches* imputed to the plaintiffs, (2) the administration of the case in reference to the *statute of limitations*, and (3) a question upon *misjoinder* of plaintiffs.

1. The Government contends that because of their *laches* in the prosecution of their suit betwixt April 19th, 1864, and June 30th, 1882, the plaintiffs have forfeited any right to *interest*. [In the brief it is said, with great emphasis (p. 8), that such *laches* extended from the time of the *bringing* to that of the *ending* of the suit (twenty-four years); but that is plainly inadvertent.]

In the Ystalafera case (110 U. S., 174) the formal verdict looked to "an adjudication by the court of *the questions of fact and law* arising upon the testimony" (p. 176). In discharging that duty this COURT corrected an error of mixed *fact and law* into which the court below had fallen. Indeed, the record in that case as to *laches* was simple, viz., *an unexplained delay* by the plaintiff to take any step from December, 1856, until January, 1883. To a tribunal having the function of passing upon *fact*, that evidence could lead to no other result than that to which this COURT came.

In the present case, granting that the action by the referee and the court below must be regarded as substantially that of the *jury* of April 21st, 1864, as contemporaneously directed by the court then sitting,—it appears that the question of *laches* was expressly left to the former as incident to their *discretion* in giving or refusing interest (110 U. S., 176); and that evidence which was given upon that point, after considering which, they exercised their discretion by *allowing* interest.

Upon this state of things it is submitted that unless as a matter of *law* the court below could have *directed* the jury to refuse interest, and that direction had been asked for and refused, no *error* could be predicated of such finding. The

Ystalafera case is no authority for the position just supposed, but quite the contrary.

Again, the exceptions below upon this point went to the general conclusion reached thereon by the referee. They did not concern the competency or the effect of any particular part of the evidence. Therefore, unless *no evidence* had been given tending to show *diligence* in prosecuting the suit, the report (*verdict*) thereupon cannot be questioned now. Counsel for the Government below seem to have argued the question of laches as one turning upon the preponderance of evidence. No appearance is presented of any suggestion there that the very large number of like cases then pending, the frequent changes of counsel, the variations of successive Secretaries from Chase to Sherman upon the policy of paying these claims, and the contradictory directions given from the Treasury to the district attorney—may not have operated by throwing this class of litigation into a sort of *typhoidal* condition difficult of remedy, no matter who might be the attending attorneys.

But it is not necessary to pursue these suggestions in the presence of this COURT, which is happy in having as one of its members a gentleman personally so familiar with the *lets* and *hindrances* incident to the New York customs cases docket.

It is therefore submitted, without more, that the question of *laches* is not before this COURT for any practical purpose.

2. The error suggested in connection with the statute of limitations does not exist.

The order upon this matter made below (21) was, as has already been suggested, in obvious accordance with the intention of the parties in the record; and it was not excepted to.

3. As to the alleged *misjoinder* of *Bartels :*

The facts are that the suit was brought for excessive exactions from 1853 to 1857, inclusive. There is no question that Bartels was not jointly interested in what occurred after May, 1856, when his name became part of that of the firm (53). Previously to January 1, 1852, it is clear that Bartels was a clerk of that firm. From January 1, 1852, to May, 1856, the firm books exhibit him as one of the firm (53).

Thereupon the referee found that Bartels was a member of the firm from 1852 until after the exactions in question had ended.

The situation upon this matter therefore is that there was *evidence* tending to the conclusion reached by the referee (*jury*), and therefore, as already suggested at another point in this brief, that the finding of the referee (*jury*) thereupon cannot now be questioned However, it appears also to be *justified* by the record.

The words of the learned judge below, in connection with the defendants' exception to the alleged misjoinder of Bartels, indicates (115) that it was argued before him by the defendants that such misjoinder was fatal *to the action.* And he so deals with the point. But it is plain that the objection made to Bartels was one which, so far as well founded, could not have led to a nonsuit, or a verdict for the defendants—because in any case, as admitted by the defendants, the plaintiffs would have recovered for all *exactions* after May, 1856. The objection was in substance only to the competency of the evidence of exactions before that date.

It is, however, submitted that he was properly a plaintiff for *all* the items which make up this recovery.

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F. D. McKenney,
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